

# ARKANSAS CODE OF 1987 ANNOTATED

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# ARKANSAS CODE OF 1987 ANNOTATED



## VOLUME 26B 2012 Replacement TITLE 26: TAXATION (CHAPTERS 34-51)

*Prepared by the Editorial Staff of the Publisher*

Under the Direction and Supervision of the  
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## Sources

This volume contains legislation enacted by the Arkansas General Assembly through the 2012 Fiscal Session. Annotations are to the following sources:

Arkansas Supreme Court and Arkansas Court of Appeals Opinions through 2012 Ark. LEXIS 240 (May 17, 2012) and 2012 Ark. App. LEXIS 466 (May 16, 2012).

Federal Supplement through May 21, 2012.

Federal Reporter 3d Series through May 21, 2012.

United States Supreme Court Reports through May 21, 2012.

Bankruptcy Reporter through May 21, 2012.

Arkansas Law Notes through the 2008 Edition.

Arkansas Law Review through Volume 61, p. 787.

University of Arkansas at Little Rock Law Review through Volume 30, p. 267.

ALR 6th through Volume 64, p. 655.

ALR Fed. 2d through Volume 46, p. 473.

## **Titles of the Arkansas Code**

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## **User's Guide**

Differences in language, subsection order, punctuation, and other variations in the statute text from legislative acts, supplement pamphlets, and previous versions of the bound volume, are editorial changes made at the direction of the Arkansas Code Revision Commission pursuant to the authority granted in § 1-2-303.

Many of the Arkansas Code's research aids, as well as its organization and other features, are described in the User's Guide, which appears near the beginning of the bound Volume 1 of the Code.



# TITLE 26

## TAXATION

(CHAPTERS 1-33 IN VOLUME 26A; CHAPTERS 52-57 IN VOLUME 27A; CHAPTERS 58-82 IN VOLUME 27B)

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3. PROPERTY SUBJECT TO TAXATION AND EXEMPTIONS.
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***SUBTITLE 4. COLLECTION AND ENFORCEMENT*****CHAPTER 34****GENERAL PROVISIONS**

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- 26-34-102. Ownership error in assessment.
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## SECTION.

- 26-34-106. Limitation of actions on intangible property taxes.
- 26-34-107. No proceedings after payment except for fraud.
- 26-34-108. Suits against local taxing authorities.
- 26-34-109. Common carriers not to carry goods on which tax not paid.

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**Effective Dates.** Acts 1883, No. 114, § 226: effective on passage.

Acts 1911, No. 125, § 2: effective on passage.

Acts 1929, No. 174, § 4: effective on passage.

Acts 1931, No. 250, § 7: approved Mar. 31, 1931. Emergency clause provided: "It



being determined that a great deal of tax due the State of Arkansas is being evaded, and that carriers are permitting goods upon which a tax has not been paid to be transported and sold, an emergency is hereby declared and this Act shall be in

full force and effect from and after its passage.”

Acts 1931, No. 281, § 4: effective on passage.

Acts 1941, No. 337, § 2: effective on passage.

### RESEARCH REFERENCES

**ALR.** Estoppel of state or local government in tax matters. 21 A.L.R.4th 573.

Recovery of tax paid on exempt property. 25 A.L.R.4th 186.

**Am. Jur.** 72 Am. Jur. 2d, State Tax., § 866 et seq.

**C.J.S.** 84 C.J.S., Tax., § 640 et seq.

## 26-34-101. Preference of tax liens.

(a) Taxes assessed upon real and personal property shall bind them and be entitled to preference over all judgments, executions, encumbrances, or liens whensoever created.

(b) All taxes assessed shall be a lien upon and bind the property assessed from the first Monday of January of the year in which the assessment shall be made and shall continue until the taxes, with any penalty which may accrue thereon, shall be paid. However, as between grantor and grantee, the lien shall not attach until the last date fixed by law for the county clerk to deliver the tax books to the county collector in each year after the tax lien attaches.

(c)(1) Failure to satisfy a personal property tax lien following a purchase of a business or a business's assets, goods, chattels, inventory, or equipment not in the ordinary course of business shall result in the assessment of an additional penalty under § 26-36-201(c) except with respect to a purchase of the following:

(A) A vehicle subject to registration; or

(B) A manufactured home or a mobile home.

(2) A purchase of a business or a business's assets, goods, chattels, inventory, or equipment not in the ordinary course of business does not include the deed of property in lieu of foreclosure or the acquisition of title to property following a foreclosure sale.

**History.** Acts 1883, No. 114, § 101, p. 199; 1911, No. 125, § 1; C. & M. Dig., § 10023; Pope's Dig., § 13770; Acts 1941, No. 337, § 1; 1943, No. 278, § 1; A.S.A. 1947, § 84-107; Acts 2011, No. 821, § 1.

**Amendments.** The 2011 amendment added (c).

**Cross References.** Lien for taxes due improvement districts continues indefinitely until paid, § 18-61-101.

## CASE NOTES

## ANALYSIS

Liability for Taxes.

Liens.

Personal Property.

Real Property.

Tax Sales.

**Liability for Taxes.**

Where the buyer was to receive no legal or equitable right under the contract until the purchase price had been paid in full, at which time the seller obligated himself to execute a special warranty deed conveying the lands free of all liens and encumbrances, and the contract was entered into some six weeks after the tax books had been delivered to the collector, the seller was liable for the payment of taxes under the warranty. *Broadhead v. McEntire*, 19 Ark. App. 259, 720 S.W.2d 313 (1986).

**Liens.**

Taxes and improvement assessments held "obligations secured by lien" within the meaning of Acts 1927, No. 195 (superseded by § 28-49-113). *Rose v. W.B. Worthen Co.*, 186 Ark. 205, 53 S.W.2d 15, 85 A.L.R. 212 (1932).

**Personal Property.**

Taxes are a lien on personal property and follow it into whosoever hands it goes. *Bridewell v. Morton*, 46 Ark. 73 (1885) (decision under prior law).

Where, prior to an application for a receiver in insolvency, an attachment was levied by the seller upon specific goods sold to the insolvent, upon which the seller owed taxes, the state's lien for taxes was payable from the amount allowed the attaching seller upon his preferred claim. *First Nat'l Bank v. Tribble*, 155 Ark. 264, 244 S.W. 33 (1922).

**Real Property.**

Taxes on land, due at the time of a sale, are a lien upon it and covered by the vendor's covenant against incumbrances suffered by him. *Crowell v. Packard*, 35 Ark. 348 (1880) (decision under prior law).

Where a lien for taxes attaches before date of sale and the sale contract contains no agreement for payment of taxes for the preceding year, the vendor is liable for the amount of the taxes under his warranty. *Hatch v. Lowrance*, 178 Ark. 274, 10

S.W.2d 358 (1928); *Tate v. Ellis*, 201 Ark. 1185, 147 S.W.2d 34 (1941).

A mortgagee discharging a lien for taxes on mortgaged property is not a volunteer for the reason that the payment is necessary to protect his interest, and ordinarily he would be subrogated to the state's lien for reimbursement. *Quarry Sav. Bank & Trust Co. v. First Nat'l Bank*, 185 Ark. 433, 47 S.W.2d 802 (1932).

A mortgagee who paid the taxes on mortgaged property between the date of the foreclosure decree and the sale of the property is not entitled to reimbursement from the purchaser. *Quarry Sav. Bank & Trust Co. v. First Nat'l Bank*, 185 Ark. 433, 47 S.W.2d 802 (1932).

Title derived from improvement district prevails over tax title from state where district instituted foreclosure proceedings prior to date on which tax lien is affixed. *Terry v. Starks*, 221 Ark. 870, 256 S.W.2d 545 (1953).

Property agreement providing that the family home would be sold and that net proceeds were to be paid to the wife was construed so that husband had to pay mortgage payment, taxes, and special assessments which were due and payable upon the day of the sale. *Jones v. Jones*, 236 Ark. 296, 365 S.W.2d 716 (1963).

Tax assessor did not err in disregarding a freeze and assessing a taxpayer's property at a higher amount based on a change in "location factor" because pursuant to subsection (b) of this section, changes in assessment were valued as of the first Monday in January of the year in which the changes are made, so the assessment value that the taxpayer was notified of in July 2005 was effective as of January 3, 2005, prior to his sixty-fifth birthday. *Curry v. Pope County Equalization Bd.*, 2011 Ark. 408, — S.W.3d — (2011).

**Tax Sales.**

The state's lien on land for taxes cannot be defeated by the owner's permitting it to be sold to the state for taxes at a void tax sale and then purchasing it from the state as land forfeited for taxes. *Texarkana Water Co. v. State*, 62 Ark. 188, 35 S.W. 788 (1896) (decision under prior law).

Land transferred to improvement districts. *Terry v. Drainage Dist. Miller County*, 206 Ark. 940, 178 S.W.2d 857

(1943); *Deniston v. Burroughs*, 209 Ark. 436, 190 S.W.2d 623 (1945) (decisions prior to 1943 amendment).

Where taxes against mineral interests were not properly extended on tax books by the county clerk, but the mineral interests were duly ordered by the assessor and taxes lawfully levied by quorum court, a valid tax lien arose under this section, and allegation of willingness to pay tax had to

be made before equitable relief would be granted in enjoining tax sale. *Schuman v. Ouachita County*, 218 Ark. 46, 234 S.W.2d 42 (1950).

**Cited:** *Miners' Bank v. Churchill*, 156 Ark. 191, 245 S.W. 829 (1922); *In re Wrigley*, 195 B.R. 914 (Bankr. E.D. Ark. 1996); *Worth v. City of Rogers*, 341 Ark. 12, 14 S.W.3d 471 (2000).

### **26-34-102. Ownership error in assessment.**

It shall not be necessary to the validity of an assessment or of a sale of land for taxes that it be assessed to its true owner. Rather, the taxes shall be a charge upon the real and personal property taxed and, when sold, shall vest the title in the purchaser without regard to who owned the land or other property when assessed or when sold.

**History.** Acts 1883, No. 114, § 101, p. 199; C. & M. Dig., § 10025; Pope's Dig., § 13771; A.S.A. 1947, § 84-108.

### **CASE NOTES**

#### **Part Interests.**

Where mineral interest was assessed and taxed separately from the surface land and the owner of a one-half interest in the minerals failed to pay the taxes, his property rights in the one-half mineral interest, which were to terminate in 25 years, were immediately forfeited when

his mineral interest was sold at a tax sale, and the tax deed vested complete title in a one-half mineral interest in the purchaser. *Edwards v. Hall*, 267 Ark. 1003, 593 S.W.2d 465 (1980).

**Cited:** *Aldridge v. Tyrrell*, 301 Ark. 116, 782 S.W.2d 562 (1990).

### **26-34-103. Liability of executor or administrator.**

The personal property of any deceased person shall be liable in the hands of any executor or administrator for any tax due on the same by any testator or intestate.

**History.** Acts 1883, No. 114, § 101, p. 199; C. & M. Dig., § 10025; Pope's Dig., § 13771; A.S.A. 1947, § 84-108.

### **26-34-104. Attorney General to conduct suits.**

All suits which may be brought under the provisions of this section and § 26-34-107 shall be conducted by the Attorney General as other suits brought in the name of the State of Arkansas.

**History.** Acts 1931, No. 281, § 2; Pope's Dig., § 13900; A.S.A. 1947, § 84-111.



**26-34-105. Limitation of actions on tangible property taxes.**

No suit shall be brought for the recovery of overdue taxes accruing because of the underassessment of tangible personal and real property resulting from an error of the county assessor after three (3) years from the date on which the taxes should have been collected in regular course.

**History.** Acts 1929, No. 174, § 1; Pope's Dig., § 13901; A.S.A. 1947, § 84-112; Acts 1999, No. 572, § 7.

**CASE NOTES**

**Cited:** State ex rel. Holt v. New York Life Ins. Co., 198 Ark. 820, 131 S.W.2d 639 (1939).

**26-34-106. Limitation of actions on intangible property taxes.**

No suit shall be brought for the recovery of unpaid and overdue taxes accruing because of underassessment of intangible property after seven (7) years from the date on which the taxes should have been in regular course collected.

**History.** Acts 1929, No. 174, § 2; Pope's Dig., § 13902; A.S.A. 1947, § 84-113.

**26-34-107. No proceedings after payment except for fraud.**

After the assessment and full payment of any general property, privilege, or excise tax, no proceedings shall be brought or maintained for the reassessment of the value on which the tax is based, except for actual fraud of the taxpayer. Failure to assess taxes as required by law shall be prima facie evidence of fraud.

**History.** Acts 1931, No. 281, § 1; Pope's Dig., § 13899; A.S.A. 1947, § 84-110.

**CASE NOTES****ANALYSIS**

Applicability.  
Assessment.  
Fraud.

**Applicability.**

This section applied to suits pending at the time it became effective. State ex rel. Attorney Gen. v. Anderson-Tully Co., 186 Ark. 170, 53 S.W.2d 17, 85 A.L.R. 100 (1932).

This section applies to suits by the state

to collect delinquent privilege, excise, and sales taxes. Arkansas-Louisiana Gas Co. v. Hardin, 206 Ark. 593, 176 S.W.2d 903 (1944).

It is the failure of collecting officials to invoke promptly the statutory remedies in collecting taxes, rather than any affirmative action on the part of such officials, that enables a taxpayer, who has made an honest disclosure and payment of taxes to take advantage of this section. Arkansas-Louisiana Gas Co. v. Hardin, 206 Ark. 593, 176 S.W.2d 903 (1944).



**Assessment.**

This section does not bar collection of tax where tax was never assessed, demanded, or paid. *Southwestern Distilled Products Co. v. State*, 199 Ark. 761, 136 S.W.2d 166 (1940); *Terminal Oil Co. v. McCarroll*, 201 Ark. 830, 147 S.W.2d 352 (1941), overruled in part, *Foot's Dixie Dandy, Inc. v. McHenry*, 270 Ark. 816, 607 S.W.2d 323, 21 A.L.R.4th 565 (1980).

If from time to time audits of corporation's business were made by state agents and in consequence of such audits corporation made an assessment of items claimed to be interstate transactions, but did not pay tax because of ruling by state that it was not to be included in the declaration, then the tax for disclosed and reported periods would not be assessable. *Hollis & Co. v. McCarroll*, 200 Ark. 523, 140 S.W.2d 420 (1940).

Where taxpayer, in reliance upon advice of state, failed to collect sales tax on interstate sales and filed monthly reports showing sales taxes were not being collected or paid on these sales, state was precluded from reassessment and collection of the taxes. *McCarroll v. Hollis & Co.*, 201 Ark. 931, 148 S.W.2d 167 (1941).

**Fraud.**

A gross underassessment of a taxpayer's property is not evidence of fraud within the meaning of this section. *State ex rel. Attorney Gen. v. Anderson-Tully Co.*, 186 Ark. 170, 53 S.W.2d 17, 85 A.L.R. 100 (1932).

A complaint by the state seeking to recover back taxes from a corporation, alleging that the corporation's personal property was grossly underassessed, without alleging that actual fraud was practiced by the corporation in making the underassessment, was subject to dismissal. *State ex rel. Attorney Gen. v. Chicago Mill & Lumber Corp.*, 187 Ark. 65, 58 S.W.2d 951 (1933).

State was not entitled to recover in suit against life insurance company for back taxes on annuity insurance premiums where insurance company made report of the premiums collected and paid the taxes due thereon, there being no element of fraud in its failure to report its annuity premiums, as the administrative officers of the state were of the opinion that such premiums were not taxable. *State ex rel. Holt v. New York Life Ins. Co.*, 198 Ark. 820, 131 S.W.2d 639 (1939).

Where taxpayer filed regularly and in due time returns which reflected a complete disclosure of all sales in controversy, under which disclosure the ascertainment of total liability was only a matter of calculation, and he paid promptly the amount to be due under its asserted theory of liability by the return and no concealment, fraud, or collusion in the matter was alleged or proved, suit for recovery of sales tax was barred by this section. *Arkansas-Louisiana Gas Co. v. Hardin*, 206 Ark. 593, 176 S.W.2d 903 (1944).

**26-34-108. Suits against local taxing authorities.**

(a) Whenever an action may be brought against any person holding the office of county collector, county assessor, or county clerk for performing or attempting to perform any duty or thing authorized by any of the provisions of this act or the laws of this state, for the collection of the public revenues, the county collector, county assessor, or county clerk shall be allowed and paid out of the county treasury reasonable fees of counsel and other expenses for defending the action or suit and the amount of any damages or costs adjudged against him or her.

(b) The fees, expenses, damages, and costs shall be apportioned ratably by the county clerk among all the parties entitled to share the taxes so collected and shall be deducted by the county clerk from the shares or portions of revenue at any time payable to each, including, as one of the parties, the state itself, as well as the counties, townships, towns, or cities, and other corporations or other organizations entitled thereto as indicated.

**History.** Acts 1883, No. 114, § 211, p. 199; C. & M. Dig., § 10182; Pope's Dig., § 13965; A.S.A. 1947, § 84-109.

**Meaning of "this act".** Acts 1883, No. 114, codified as §§ 14-15-201, 14-15-505, 16-20-106, 16-92-113 [repealed], 16-92-114, 16-92-115 [repealed], 16-96-401, 21-6-305, 25-16-517, 26-1-101, 26-2-101, 26-2-103, 26-2-108, 26-3-201, 26-3-204, 26-3-301, 26-25-101 — 26-25-103, 26-25-105, 26-26-702 — 26-26-704, 26-26-714, 26-26-716, 26-26-717, 26-26-903 — 26-26-909, 26-26-914, 26-26-1001, 26-26-1102, 26-26-1107, 26-26-1202 — 26-26-1205, 26-26-1505, 26-28-101, 26-28-103 — 26-28-108, 26-28-110, 26-28-111, 26-34-101 — 26-34-103, 26-34-108, 26-35-201, 26-35-301 —

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**Cross References.** Illegal or unauthorized taxes or assessments by counties or cities may be enjoined, § 16-113-306.

## CASE NOTES

### ANALYSIS

Applicability.

Injunctions.

### Applicability.

This section has no applicability to the right of an attorney employed by a county to represent the county in a suit to test the validity of an act of the General Assembly detaching certain land from one county and attaching it to another. *Spence & Dudley v. Clay County*, 122 Ark. 157, 182 S.W. 573 (1916).

### Injunctions.

The collection of taxes partly illegal will not be enjoined without an offer to pay the legal part. *Bridewell v. Morton*, 46 Ark. 73 (1885).

Illegal taxes may be enjoined when the injunction will prevent a multiplicity of suits. *City of Little Rock v. Prather*, 46 Ark. 471 (1885).

A state court cannot enjoin a tax levied pursuant to a mandamus from a federal court. *Gaines v. Springer*, 46 Ark. 502 (1885).

## 26-34-109. Common carriers not to carry goods on which tax not paid.

(a)(1) It shall be unlawful for any railroad company, bus line company, truck line company, motor vehicle carrier, or any other common carrier, whether person, firm, or corporation, or the agent or receiver thereof, to knowingly transport, or permit to be transported, within the State of Arkansas any goods, wares, merchandise, or articles whatsoever upon the sale or possession for sale of which a tax is imposed by law when the tax has not been paid upon the goods, wares, merchandise, or articles. And it shall be unlawful for any carrier to sell, offer for sale, or deliver to any person, or permit the sale or delivery of any goods, wares, merchandise, or articles upon which the tax has not been paid as required by law.

(2) Each sale, offer for sale, or delivery shall constitute a separate offense.

(b) For each violation of this section, a fine of twenty-five dollars (\$25.00) shall be imposed, and the person, firm, corporation, or the agent or receiver thereof, violating any of the provisions of this section shall also be liable for the amount of tax due.

(c) All fines collected for the violation of any of the provisions of this section shall be paid into the State Treasury.

(d) All taxes due under this section may be recovered by a civil action brought at the instance of the Attorney General in the name of the Director of the Department of Finance and Administration of the State of Arkansas.

(e) This section is not to be construed to repeal any law, but it shall be cumulative to all present laws affecting the subject matter contained in this section.

**History.** Acts 1931, No. 250, §§ 3-6;  
Pope's Dig., §§ 13477-13480; A.S.A. 1947,  
§§ 84-1724 — 84-1727.

## CHAPTER 35

### COLLECTION AND PAYMENT OF TAXES GENERALLY

#### SUBCHAPTER.

1. GENERAL PROVISIONS.
2. PENALTIES AND ENFORCEMENT.
3. LIABILITY GENERALLY.
4. LIABILITY OF FIDUCIARIES.
5. TAX PAYMENTS.
6. COUNTY COLLECTORS.
7. TAX COLLECTION.
8. JUDICIAL APPEALS.
9. TAX REFUNDS.
10. RECORDS AND FORMS.
11. DISASTER RELIEF INCOME TAX CHECK-OFF PROGRAM [TRANSFERRED]
12. BABY SHARON ACT [TRANSFERRED]
13. MILITARY FAMILY RELIEF CHECK-OFF PROGRAM [TRANSFERRED]

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#### RESEARCH REFERENCES

**ALR.** Recovery of tax paid on exempt property. 25 A.L.R.4th 186.      **C.J.S.** 84 C.J.S., Tax., § 607 et seq.  
**Am. Jur.** 72 Am. Jur. 2d, State Tax., § 834 et seq.

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#### SUBCHAPTER 1 — GENERAL PROVISIONS

##### SECTION.

26-35-101. Escrow funds for payment of real property taxes.

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**Effective Dates.** Acts 1987, No. 739, § 3: Apr. 7, 1987. Emergency clause provided: "It is hereby found and determined by the General Assembly that thousands



of dollars of funds are being accumulated in escrow accounts being held by banks, savings and loan associations, and other financial institutions, or by persons, firms, or corporations who maintain such escrow accounts for the payment of real property taxes on lands belonging to others, and that it is in the public interest that whenever a full year's taxes have accumulated in the escrow account for payment of real property taxes during said year, the payment be remitted to the county collector within a reasonable time after said amount has been accumulated thereby enabling the cities, counties and school districts of this State to have the prompt benefit of the payment of taxes for which said escrow accounts are maintained; that

many cities, counties and school districts are suffering a severe cash flow problem due to the lack of receiving said funds promptly upon the same being accumulated within the said escrow accounts; and that the immediate passage of this Act is necessary to assure that taxpayer funds accumulating in such escrow accounts be promptly remitted to the county collectors for distribution to the various taxing units of which said funds were intended. Therefore, an emergency is hereby declared to exist, and this Act being necessary for the immediate preservation of the public peace, health, and safety, shall be in full force and effect from and after its passage and approval."

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### **26-35-101. Escrow funds for payment of real property taxes.**

(a)(1) All banks, savings and loan associations, and other financial institutions and all persons, firms, or corporations which are holders of escrow funds for payment of real property taxes, within thirty (30) days after sufficient funds have accumulated in each account for the payment of property taxes, shall notify the county collector.

(2) If sufficient funds for the payment of one (1) year's taxes on real estate have accumulated within an escrow account prior to the commencement of the period in which the county collector may collect real property taxes for the year in which due, this notification shall be made within thirty (30) days after the county collector is authorized by law to commence collecting real property taxes during the year.

(3) Further, those holders of escrow funds must remit payment for property taxes within sixty (60) days of receipt of the tax bills from the county collector.

(4)(A) Any bank, savings and loan association, or other financial institution or any person, firm, or corporation holding escrow funds for the payment of real property taxes due on properties belonging to persons for whom the escrow accounts are being held, which fails to pay to the county collector the real property taxes on the property within the time limitation imposed by this subsection, shall be subject to a penalty of ten percent (10%) of the amount of the total taxes due.

(B) The penalties shall be paid from funds belonging to the holder of the escrow account.

(b) In no event shall moneys paid as penalties for late payment of real property taxes under the provisions of subsection (a) of this section be charged against the escrow account.

(c) All penalties collected by the county collector under subsection (a) of this section shall be credited to the various taxing units of the county



in the respective proportions that each taxing unit shares in real property taxes collected by the county.

**History.** Acts 1987, No. 739, § 1.  
**A.C.R.C. Notes.** Acts 1987, No. 739, § 1, provided, in part, that in 1988 holders of escrow funds should remit payment of property taxes within 90 days of receipt of the tax bills but that the 60-day limitation in subdivision (a)(3) would apply in 1989 and thereafter.  
**Publisher's Notes.** Acts 1987, No. 739, § 2, provided that the act was applicable to taxes payable in 1988 and thereafter.

## SUBCHAPTER 2 — PENALTIES AND ENFORCEMENT

### SECTION.

26-35-201. Distraint when taxpayer about to move.

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**Effective Dates.** Acts 1883, No. 114, § 226: effective on passage.

### 26-35-201. Distraint when taxpayer about to move.

(a) If a county collector has reason to believe that a person charged with taxes, other than taxes upon real estate, is about to remove from the county without paying the person's taxes, at any time the county collector may levy and collect the taxes with costs by distress and sale.

(b) A county collector may levy and collect the charged taxes with costs by distress and sale if the delinquent taxes are not satisfied or paid in full following the sale of a business or the sale of the goods, chattels, inventory, or equipment of a business not in the ordinary course of business.

**History.** Acts 1883, No. 114, § 121, p. 199; C. & M. Dig., § 10072; Pope's Dig., § 13833; A.S.A. 1947, § 84-914; Acts 2011, No. 821, § 2.  
**Amendments.** The 2011 amendment added present (b).  
**Cross References.** Distraint of goods after delinquency, § 26-36-206.

## SUBCHAPTER 3 — LIABILITY GENERALLY

### SECTION.

26-35-301. Duty to pay taxes.  
 26-35-302. Life tenants and remaindermen.

### SECTION.

26-35-303. Joint tenant ownership of property.

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**Cross References.** Grantee in conveyance assumes payment of taxes, § 18-12-102.  
**Effective Dates.** Acts 1883, No. 114, § 226: effective on passage.

**26-35-301. Duty to pay taxes.**

(a) Every person shall be liable to pay tax for the lands, town, or city lots of which he or she may stand seized for life, by curtesy, or in dower, or may have the care of as guardian, executor, or administrator, or as agent or attorney, having the funds of the principal in his or her hands.

(b) It shall be the duty of each person holding lands as indicated to pay the taxes which may be assessed thereon each year.

**History.** Acts 1883, No. 114, §§ 161, 10050; Pope's Dig., §§ 13808, 13809; 162, p. 199; C. & M. Dig., §§ 10049, A.S.A. 1947, §§ 84-921, 84-922.

**CASE NOTES****ANALYSIS**

Dower Rights.  
Life Tenants.  
Parents.

**Dower Rights.**

Surviving husband occupying land under dower right was under duty to pay taxes, and where he permitted land to be forfeited to state for taxes, a purchase from the state by his son-in-law, who permitted his father-in-law to continue to occupy the land with him, there being other evidence of close relationship, amounted to a mere redemption, and interests in land remained as they were before the tax forfeiture. *Smith v. Davis*, 200 Ark. 547, 140 S.W.2d 126 (1940).

**Life Tenants.**

Where statute imposed upon the life tenant the duty to pay taxes and daughter occupied property with her mother, who was life tenant, with free rent, after death of mother, daughter was not entitled to be

reimbursed for taxes paid by her upon partition of real estate. *Kelley v. Acker*, 216 Ark. 867, 228 S.W.2d 49 (1950).

Since it is the duty of grantees of life tenant to keep taxes paid on lands so held, a purchase of a tax title resulting from failure to pay the taxes amounted to merely a redemption and did not give them title in fee. *Hutchison v. Sheppard*, 225 Ark. 14, 279 S.W.2d 33 (1955).

The duty to pay taxes under the statute applies to life tenants, who are charged with the responsibility of paying taxes on land, and persons who live with a life tenant, rent free. *Acord v. Acord*, 70 Ark. App. 409, 19 S.W.3d 644 (2000).

**Parents.**

Father is required to pay taxes on land of his minor children, and where he allows the land to become delinquent and sold for taxes, a conveyance to the father from one purchasing from state amounts to a redemption and title remains in the children. *Dedmon v. Hawkins*, 211 Ark. 840, 203 S.W.2d 183 (1947).

**26-35-302. Life tenants and remaindermen.**

If any person who shall be seized of lands for life shall neglect to pay the taxes thereon so long that the lands shall be sold for the payment of the taxes and shall not within one (1) year after the sale redeem them according to law, the person shall forfeit to the persons next entitled to the land in remainder or reversion all the estate which he or she, so neglecting as indicated, may have in the lands. The remainderman or reversioner may redeem the lands in the same manner that other lands may be redeemed after being sold for taxes. The person, so neglecting as indicated, shall be liable in an action to the next entitled to the estate for all damages that person may have sustained by the neglect.

**History.** Acts 1883, No. 114, § 165, p. 199; C. & M. Dig., § 10054; Pope's Dig., § 13813; A.S.A. 1947, § 84-925.

## CASE NOTES

### ANALYSIS

Applicability.  
Forfeiture.  
Life Tenants.  
Redemption.  
Remaindermen.

#### **Applicability.**

Where one brother purchased another brother's undivided one-third interest in lands from a stranger who had purchased the interest at a tax sale, this section does not apply in that the brothers were tenants in common. *Luster v. Arnold*, 249 Ark. 152, 458 S.W.2d 414 (1970).

#### **Forfeiture.**

A life tenant does not forfeit his estate where he procures another to purchase the land at the tax sale for his benefit. *Swan v. Rainey*, 59 Ark. 364, 27 S.W. 240 (1894); *Mercantile Trust Co. v. Adams*, 95 Ark. 333, 129 S.W. 1101 (1910).

A void tax sale does not work a forfeiture of the estate of a life tenant. *Magness v. Harris*, 80 Ark. 583, 98 S.W. 362 (1906); *Champion v. Williams*, 165 Ark. 328, 264 S.W. 972 (1924); *Kory v. Less*, 180 Ark. 342, 22 S.W.2d 25 (1929); *Miller v. Whyte*, 194 Ark. 203, 106 S.W.2d 207 (1937).

A widow does not forfeit her life estate in husband's homestead through failure to pay taxes where she redeems the land before the question is raised. *Hill v. Schultz*, 181 Ark. 719, 27 S.W.2d 512 (1930).

Where proof on issue as to validity of tax sale was insufficient on appeal to pass on the question, chancellor's finding that life estate should not be forfeited raised a presumption that he regarded the tax sales under which remainderman claimed forfeiture as void or voidable. *Beloate v. Less*, 193 Ark. 907, 103 S.W.2d 633 (1937).

Equity had jurisdiction to declare forfeiture of life estate in realty at suit of remainderman who purchased realty from drainage district to which it was sold under foreclosure decree enforcing the district's lien for taxes; this decree protected remainderman's rights and did no harm to

life tenant who had already lost title by failing to redeem. *Higginbotham v. Harper*, 206 Ark. 210, 174 S.W.2d 668 (1943).

#### **Life Tenants.**

This section has reference to a life tenant whose duty it is to pay the taxes; it has no applicability where occupancy and use of property during a wife's natural life is given to her by a decree in divorce action, where she is not under obligation to pay taxes. *Miller v. Whyte*, 194 Ark. 203, 106 S.W.2d 207 (1937).

Duty rests upon life tenant to pay all general taxes and all special assessments to protect his own interest and that of the remaindermen. *Higginbotham v. Harper*, 206 Ark. 210, 174 S.W.2d 668 (1943).

#### **Redemption.**

Where a life tenant permits lands to forfeit to the state for the nonpayment of taxes but later purchases the land from the state, the remainderman, not having redeemed, loses his right to work a forfeiture of the life estate by himself redeeming the land. *Galloway v. Battaglia*, 133 Ark. 441, 202 S.W. 836 (1918).

Life tenant cannot acquire the interest of the remainderman in realty by failure to discharge duty to pay taxes, thus permitting realty to be forfeited to the state, and then taking a conveyance from one who, at his request, purchases it from the state, as such purchases will be regarded as redemptions. *Higginbotham v. Harper*, 206 Ark. 210, 174 S.W.2d 668 (1943).

Where life tenant fails to redeem land from taxes, redemption from taxes by remainderman is for the benefit of all remaindermen. *Smith v. Kappler*, 220 Ark. 10, 245 S.W.2d 809 (1952).

Where life tenant purchased an outstanding drainage district tax title to the land, this purchase amounted only to a redemption, as it was her duty to pay taxes and special assessments. *Wheeler v. Harris*, 232 Ark. 469, 339 S.W.2d 99 (1960).

#### **Remaindermen.**

One who enters lands under a void sale is a trespasser, and the statute of limita-



tions does not run against the remaindermen until the expiration of the life estate. *Jones v. Fowler*, 171 Ark. 594, 285 S.W. 363 (1926).

One whose color of title is derived from a deed from a life tenant, purporting to convey a fee simple, and who pays taxes during the life of the life tenant, does not

affect the title of the remainderman because a failure to pay taxes would result in a forfeiture of the life estate. *Bradley Lumber Co. v. Burbridge*, 213 Ark. 165, 210 S.W.2d 284 (1948).

**Cited:** *Ward v. Ward*, 120 Ark. 358, 179 S.W. 495 (1915); *Holloway v. Bank of Atkins*, 205 Ark. 598, 169 S.W.2d 868 (1943).

**26-35-303. Joint tenant ownership of property.**

(a) In all cases where any tract of land may be owned by two (2) or more persons as joint tenants, coparceners, or tenants in common, and one (1) or more proprietors shall have paid the tax or tax and penalty charged on his or her proportion of the tract, or one (1) or more of the remaining proprietors shall have failed to pay his or her proportion of his or her tax or tax and penalty charged on the land and partition of the land has or shall be made between them, then the tax or tax and penalty, paid as indicated, shall be deemed to have been paid on the proportion of the tract set off to the proprietor who paid his or her proportion of the tax or tax and penalty, and the proprietor so paying the tax or tax and penalty, as indicated, shall hold the proportion of the tract set-off to him or her, as indicated, free from the residue of the tax or tax and penalty charged on the tract before partition, and the proportion of the tract set off to the proprietor who shall not have paid his or her proportion of the tax or tax and penalty, remaining unpaid, shall be charged with the tax or tax and penalty in the same manner as if the partition had been made before the tax or tax and penalty, had been assessed.

(b) Whenever any land so held by tenants in common shall be sold upon proceedings in partition or shall be taken by the election of any of the parties to such proceedings, or when any real estate shall be sold at judicial sale, or any administrator's, executor's, guardian's, or trustee's sale, the court shall order the taxes and penalties and the interest thereon, against the lands to be discharged out of the proceeds of the sale or election.

**History.** Acts 1883, No. 114, § 166, p. 199; C. & M. Dig., §§ 10055, 10056; Pope's Dig., §§ 9472, 10541, 13814, 13815; A.S.A. 1947, § 84-926.

**CASE NOTES**

**ANALYSIS**

Construction.  
Judicial Sales.  
Taxes.

**Construction.**

This section was copied from an Ohio statute, and it is presumed that the General Assembly adopted the interpretation of it theretofore made by the Ohio court of

last resort. *Miners' Bank v. Churchill*, 156 Ark. 191, 245 S.W. 829 (1922).

This section, being in derogation of the common law, must be strictly construed. *McIlroy v. Fugitt*, 182 Ark. 1017, 33 S.W.2d 719, 73 A.L.R. 1223 (1930).

**Judicial Sales.**

Subsection (b) of this section relates to all judicial sales and not merely to sales in partition proceedings. *Miners' Bank v.*

Churchill, 156 Ark. 191, 245 S.W. 829 (1922).

On a judicial sale the taxes are required to be satisfied from the proceeds, and if mortgagee, between date of decree of foreclosure and date of sale, paid taxes on land to preserve its interest, it should have secured reimbursement by amending its complaint in the case and could not recover for the taxes so paid from the purchaser at the foreclosure sale after confirmation of the sale. *Quarry Sav. Bank & Trust Co. v. First Nat'l Bank*, 185 Ark. 433, 47 S.W.2d 802 (1932).

#### **Taxes.**

This section, providing for payment of taxes out of proceeds, has reference to the

date of the sale, meaning the day on which the land is bid in by the purchaser and not to the confirmation. It is not essential that original decree directing foreclosure should contain direction for such payment; rather, the court may direct payment at any time before the fund is disbursed. *Miners' Bank v. Churchill*, 156 Ark. 191, 245 S.W. 829 (1922).

The word "taxes" as used in this section refers to the general revenues of the state and not to local assessments. *McIlroy v. Fugitt*, 182 Ark. 1017, 33 S.W.2d 719, 73 A.L.R. 1223 (1930).

**Cited:** *Miners' Bank v. Churchill*, 156 Ark. 191, 245 S.W. 829 (1922); *Goodrich v. Darr*, 161 Ark. 514, 256 S.W. 868 (1923).

### **SUBCHAPTER 4 — LIABILITY OF FIDUCIARIES**

#### **SECTION.**

26-35-401. Liability generally.

26-35-402. Preference of reimbursement claims.

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**Effective Dates.** Acts 1883, No. 114, § 226: effective on passage.

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#### **26-35-401. Liability generally.**

(a) Every person holding lands as guardian, executor, or administrator and neglecting or refusing to list or pay the taxes upon them, in the manner indicated, shall be liable to an action by his or her ward or devisee for any damage sustained by his or her neglect.

(b) Every person having the care of lands as agent or attorney as indicated having funds of the principal in his or her hands, for such purpose, and neglecting or refusing to list or pay the taxes on the lands shall be liable in an action to his or her principal for any damage the principal may have sustained by his or her neglect or refusal.

**History.** Acts 1883, No. 114, § 163, p. Dig., §§ 13810, 13811; A.S.A. 1947, § 84-199; C. & M. Dig., §§ 10051, 10052; Pope's 923.

#### **26-35-402. Preference of reimbursement claims.**

Every attorney, agent, guardian, executor, or administrator seized or having the care of lands, as indicated, who shall be put to any trouble or expense in listing or paying the taxes on the lands, shall be allowed a reasonable compensation for the time spent, the expenses incurred,



and money advanced as indicated, which shall be deemed in all courts a just charge against the person for whose benefit the services shall have been advanced. The claim shall be preferred to all other debts or claims and be a lien on the real estate as well as the personal estate of the person for whose benefit the services shall have been advanced.

**History.** Acts 1883, No. 114, § 164, p. 199; C. & M. Dig., § 10053; Pope's Dig., § 13812; A.S.A. 1947, § 84-924.

CASE NOTES

ANALYSIS

Creation of Liens.  
Priority of Liens.

**Creation of Liens.**

One who executed a note to his agent for money advanced in paying taxes on his land, in which he declared that he recognized the existence of a statutory lien, did not thereby create a lien where none existed by statute. *Peay v. Feild*, 30 Ark. 600 (1875) (decision under prior law).

To entitle an agent or attorney to a lien for taxes paid, he must show that he was seized of, or had care of, the land. *Peay v. Feild*, 30 Ark. 600 (1875); *Belleclair Planting Co. v. Hall*, 125 Ark. 203, 188 S.W. 574 (1916) (decision under prior law).

Voluntary payment of taxes on another's land by a stranger without any interest therein, in absence of the relationship of agent or attorney, creates no lien. *New York Life Ins. Co. v. Nichol*, 170 Ark. 791,

281 S.W. 21 (1926); *Person v. Cogbill*, 180 Ark. 664, 22 S.W.2d 161 (1929).

A bank lending money to executors to pay taxes could have the estate's real property sold to foreclose a lien therefor, though the executors did not execute a mortgage to secure the loan. *Christian v. People's Trust Co.*, 185 Ark. 55, 45 S.W.2d 857 (1932).

**Priority of Liens.**

Lien of a mortgagee, executed by owners of land after taxes had been paid by agent at owner's request, is superior to agent's lien. *First Nat'l Bank v. Polk*, 171 Ark. 543, 284 S.W. 769 (1926).

This section does not subrogate an agent paying taxes on lands to lien of state, but only gives lien to agent against owner. *First Nat'l Bank v. Polk*, 171 Ark. 543, 284 S.W. 769 (1926).

**Cited:** *First Nat'l Bank v. Wells River Sav. Bank*, 179 Ark. 834, 18 S.W.2d 370 (1929).

SUBCHAPTER 5 — TAX PAYMENTS

SECTION.

- 26-35-501. Time to pay — Installments.
- 26-35-502. Means of payment.
- 26-35-503. Interest on public debt.
- 26-35-504. Payment by warrants.

SECTION.

- 26-35-505. County collector to receive warrants at par.
- 26-35-506. Credit cards.

**Preambles.** Acts 1935, No. 326, contained a preamble which read: "Whereas, as result of decision of the Supreme Court in *Arkansas Power & Light Co. v. Curlin*, 187 Ark. 562, 61 S.W.2d 73 (1933), confusion exists as to rights of taxpayers to pay their school taxes with school warrants; and

"Whereas, it being the sense of this Body that taxpayers shall have the privilege of paying their school taxes with legally drawn school warrants of the district to which such taxes are due...."

**Effective Dates.** Acts 1869 (Adj. Sess.), No. 40, § 5: effective on passage.  
Acts 1883, No. 114, § 226: effective on

passage.

Acts 1911, No. 415, § 3: approved May 31, 1911. Emergency declared.

Acts 1935, No. 282, § 9: effective on passage.

Acts 1935, No. 326, § 2: became law without Governor's signature, Apr. 4, 1935. Emergency clause provided: "This act being necessary for the peace, health and public safety, an emergency is hereby declared and this act shall be in full force and effect from and after its passage."

Acts 1977 (1st Ex. Sess.), No. 20, § 3: Aug. 15, 1977. Emergency clause provided: "It is hereby found and determined by the General Assembly that there is an urgent need to clarify the law relating to payment methods and delinquency penalties for real and property taxes, and that public officials and taxpayers of the State of Arkansas are confused about the present law regarding the same. Therefore, to

insure an equitable and efficient method for collection of real and personal property taxes, an emergency is hereby declared to exist and this Act, being necessary for the immediate preservation of the public peace, health and safety, shall be in full force and effect from and after its passage and approval."

Acts 1989, No. 697, § 4: Mar. 20, 1989. Emergency clause provided: "It is hereby found and determined by the General Assembly that current law encumbers the early payment of taxes by taxpayers in this state; that it is in the best interest of all persons in this state that taxes be collected for the benefit of the state at the earliest possible date; therefore, an emergency is hereby declared and this act being necessary for the preservation of the public health, welfare and safety, shall become effective immediately upon passage."

## RESEARCH REFERENCES

**Am. Jur.** 72 *Am. Jur. 2d*, *State Tax.*, § 834 et seq.

**C.J.S.** 84 *C.J.S.*, *Tax.*, § 607 et seq.

## 26-35-501. Time to pay — Installments.

(a)(1) All ad valorem taxes levied on real and personal property by the several county courts of the state when assembled for the purpose of levying taxes, except taxes on the property of utilities and carriers and all ad valorem taxes on real property held in escrow, are due and payable between the first business day in March and October 15 inclusive in the year succeeding the year in which the levy is made.

(2)(A) Except as provided in § 26-35-601, every taxpayer other than a utility or carrier has the option to pay the current taxes on real property and personal property of the taxpayer in installments as follows:

(i) The first installment of one-fourth ( $\frac{1}{4}$ ) of the amount of the taxes is payable between the first business day in March and the third Monday in April inclusive;

(ii) A second installment of one-fourth ( $\frac{1}{4}$ ) or a first installment of one-half ( $\frac{1}{2}$ ) if no payment was made before the third Monday in April is payable between the third Monday in April and the third Monday in July inclusive; and

(iii) The third installment of one-half ( $\frac{1}{2}$ ) is payable between the third Monday in July and October 15 inclusive.

(B)(i) A county collector may authorize the county's taxpayers other than a utility or carrier to pay current real property taxes and

personal property taxes in installments in any amount between the first business day in March and October 15 inclusive.

(ii) Except as provided in § 26-35-601, a county collector shall not accept payment of delinquent real property taxes from a taxpayer unless the delinquent personal property taxes of the taxpayer are paid in full.

(b) All ad valorem taxes levied on the real and personal property of utilities and carriers are due and payable as follows:

(1) One-fourth ( $\frac{1}{4}$ ) between the first business day in March and the third Monday in April inclusive;

(2) One-fourth ( $\frac{1}{4}$ ) between the third Monday in April and the second Monday in June inclusive; and

(3) One-half ( $\frac{1}{2}$ ) between the second Monday in June and October 15 inclusive in the year succeeding the year in which the levy is made.

(c)(1) A county collector shall assess a penalty of ten percent (10%) against all unpaid tax balances remaining after October 15 for every taxpayer other than a utility or carrier or after the prescribed dates listed in subsection (b) of this section for utilities and carriers.

(2)(A) A taxpayer paying in installments under subdivision (a)(2) of this section shall not be assessed a penalty until the taxes become due and remain unpaid after October 15.

(B) However, if the last day for the payment of taxes on any installment is a Saturday, Sunday, or postal holiday, the last day to pay taxes without a penalty is the following business day.

(3)(A) A property tax balance payment is timely received under this subsection if mailed through the United States Postal Service and postmarked by October 15.

(B) If October 15 is a Saturday, Sunday, or postal holiday, a property tax balance payment is timely received if mailed and postmarked through the United States Postal Service the following business day.

**History.** Acts 1911, No. 415, § 1; C. & M. Dig., § 10066; Acts 1927, No. 340, § 3; 1933 (1st Ex. Sess.), No. 16, § 1; 1935, No. 282, § 3; Pope's Dig., § 13826; Acts 1975, No. 574, § 3; 1977 (1st Ex. Sess.), No. 20, § 1; 1979, No. 1050, § 1; A.S.A. 1947, § 84-913; Acts 1989, No. 697, § 1; 2003, No. 295, § 8; 2007, No. 215, § 1; 2011, No. 175, § 10; 2011, No. 821, § 3.

**A.C.R.C. Notes.** Pursuant to § 1-2-207(b), the amendments to subdivision (a)(2)(A) of this section by Acts 2011, No. 175, § 10 are partially superseded by the amendments to subdivision (a)(2)(A) of this section by Acts 2011, No. 821, § 3. Acts 2011, No. 175, § 10, replaced the word "Every" with the word "A" in former subdivision (a)(2)(A) of this section.

Pursuant to § 1-2-207(b), the amendments to subdivision (a)(2)(B) of this sec-

tion by Acts 2011, No. 175, § 10 are superseded by the amendments to subdivision (a)(2)(B) of this section by Acts 2011, No. 821, § 3. Acts 2011, No. 175, § 10, replaced the phrase "shall be deemed to have waived" with the word "waives" in former subdivision (a)(2)(B) of this section.

Acts 2011, No. 821, § 3, replaced the phrase "shall be" with the word "is" in subdivision (c)(1) of this section. However, the entire phrase "It shall be the duty of the county collectors of the respective counties to" was specifically repealed and replaced with the phrase "A county collector shall" by Acts 2011, No. 175, § 10.

**Publisher's Notes.** Acts 1977 (Ex. Sess.), No. 20, § 2, provided that the General Assembly finds that a general state of confusion exists regarding the assessment



of a delinquency penalty on the payment of real and personal property taxes, that it is the intent and purpose of this act that no taxpayer, regardless of choice of installment or single payment method, shall be assessed a ten percent (10%) delinquency penalty on any unpaid real or personal property tax balance except those balances remaining after the tenth day of October in the year in which the tax is due and payable, and that it is the intent of this act that any delinquency penalty will be assessed only against the unpaid tax balance remaining after the tenth day of October.

**Amendments.** The 2011 amendment by No. 175, in (a)(2)(A), added the exception at the beginning and inserted “and personal property”; substituted “the first business day in March” for “the third Monday in February” in (a)(2)(A)(i) and (b)(1); rewrote (a)(2)(B); substituted “the second Monday in June” for “the third Monday in April” in (b)(3); and substituted “October 15” for “October 10” throughout (c).

The 2011 amendment by No. 821 rewrote the section.

## CASE NOTES

### ANALYSIS

Construction.  
Dates for Payment.

#### Construction.

This section, considered as a whole, is not ambiguous. *Tolleson v. McMillan*, 192 Ark. 111, 90 S.W.2d 990 (1936).

#### Dates for Payment.

If a taxpayer wishes to pay in installments without penalty, he must do so within the times limited in this section, and if he wishes to pay the entire amount at one time without penalty, he must do so on or before the third Monday in April. *Tolleson v. McMillan*, 192 Ark. 111, 90 S.W.2d 990 (1936).

Property agreement providing that the family home would be sold and that net proceeds were to be paid to the wife was construed so that husband had to pay mortgage payment, taxes, and special as-

sessments which were due and payable upon the day of the sale. *Jones v. Jones*, 236 Ark. 296, 365 S.W.2d 716 (1963).

Summary judgment was properly awarded to property owners in an action by a municipal water improvement district to collect delinquent municipal improvement district taxes where the foreclosure action was barred by the three-year statute of limitations; because subsection (a) of this section specified that the first installment of the general taxes was to be payable on and from the third Monday in February to and including the third Monday in April, the three-year statute of limitations began to run 90 days after the third Monday in April 2001, well before the district filed its foreclosure action on October 1, 2004. *Vimy Ridge Mun. Water Improvement Dist. No. 139 v. Ryles*, 373 Ark. 366, 284 S.W.3d 70 (2008).

**Cited:** *McCastlain v. Wylie*, 139 Ark. 326, 213 S.W. 743 (1919).

## 26-35-502. Means of payment.

The county taxes of any county of this state levied in pursuance of law shall only be payable in the lawful currency of the United States or scrip or warrants of the county by whose authority they were issued, drawn in pursuance of law and not inconsistent with this section and §§ 14-20-103, 14-20-104, and 14-20-114.

**History.** Acts 1879, No. 77, § 11, p. 109; C. & M. Dig., § 1988; Pope's Dig., § 2533; A.S.A. 1947, § 84-927.

**Publisher's Notes.** Acts 1879, No. 77,

§ 14, provided that nothing in the act shall be so construed as to enlarge the functions or powers of the County Court of Sebastian County as under existing laws.

### 26-35-503. Interest on public debt.

The tax levied to pay the interest on the public debt shall be collected in the United States currency and paid into the State Treasury in the currency collected.

**History.** Acts 1883, No. 114, § 112, p. 199; C. & M. Dig., § 10044; Pope's Dig., § 13803; A.S.A. 1947, § 84-928.

### 26-35-504. Payment by warrants.

(a) The county collector of each county in the State of Arkansas shall receive county warrants in payment of county taxes, and the orders or warrants that may be payable on presentation of any town or city for their respective taxes.

(b) This section shall not be so construed as to compel the county collector to accept any order or warrant that is by the laws of this state required to be refunded.

**History.** Acts 1883, No. 114, § 112, p. 326, § 1; Pope's Dig., § 13804; A.S.A. 199; C. & M. Dig., § 10045; Acts 1935, No. 1947, § 84-929.

## CASE NOTES

### ANALYSIS

Constitutionality.  
Fines, Penalties, Etc.  
Manner of Payment.  
Redemption.  
Special Law.  
Warrants Receivable.

#### Constitutionality.

This section was held impliedly repealed by Ark. Const. Amend. 11 (now incorporated in Ark. Const., Art. 14, § 3). *Arkansas Power & Light Co. v. Curlin*, 187 Ark. 562, 61 S.W.2d 73 (1933).

The reenactment of this section in 1935 did not free it of the constitutional objection that it offends against Ark. Const. Amend. 11 (now incorporated in Ark. Const., Art. 14, § 3), insofar as it relates to the payment of school taxes with school warrants. *McCall v. Armstrong*, 199 Ark. 1131, 137 S.W.2d 241 (1940).

Reenactment of this section in 1935 evidenced the legislative intent to reenact so much of this section, as it stood prior thereto, as was constitutional, and those provisions permitting the use of county, city, and town warrants to pay taxes due counties, cities, or towns, respectively, does not offend against Ark. Const.

Amend. 11 (now incorporated in Ark. Const., Art. 14, § 3), which relates only to school taxes. *McCall v. Armstrong*, 199 Ark. 1131, 137 S.W.2d 241 (1940).

#### Fines, Penalties, Etc.

Under statute requiring fines, penalties, and forfeitures to be paid into the county treasury, fines, penalties, and forfeitures were to be treated as debts accruing to the county and were payable in county warrants. *McKibben v. State*, 31 Ark. 46 (1876); *Lusk v. Perkins*, 48 Ark. 238, 2 S.W. 847 (1887) (preceding decisions under prior law).

#### Manner of Payment.

Provision in § 89 of the Revenue Act of 1873, authorizing the payment of taxes with warrants issued by the state or any county, township, town, or city for their respective taxes, did not prohibit the receipt of other certificates for taxes, if otherwise authorized by law. *English v. Oliver*, 28 Ark. 317 (1873) (decision under prior law).

County collector could not refuse to take county scrip for taxes because barred by the statute of limitations, nor plead the statute as bar to a petition for mandamus to compel him to take it. *Daniel v. Askew*,



36 Ark. 487 (1880); *Whitthorne v. Jett*, 39 Ark. 139 (1882) (preceding decisions under prior law).

Notwithstanding a county levying court, in levying a special tax to build a new courthouse, ordered it to be "receivable only in currency or proper warrants drawn by proper order on the courthouse fund," a tax levied for such purpose could be paid in county warrants drawn upon funds appropriated for ordinary county purposes. *Stillwell v. Jackson*, 77 Ark. 250, 93 S.W. 71 (1905).

Municipal ordinance providing for payment of a tax "in cash" will be construed to mean either in money or in municipal orders, warrants, or scrip. *Arkansas Pub. Util. Co. v. Incorporated Town of Heber Springs*, 151 Ark. 249, 235 S.W. 999 (1921).

One receiving judgment for face value of county warrant against a county cannot, by mandamus, require county authorities to collect a portion of the county taxes in cash instead of in county warrants, since the taxpayer can pay taxes in either cash or warrants. *United States ex rel. Jensen v. Criner*, 283 F. 774 (8th Cir. 1922).

Neither the federal nor the state courts can require a county to levy a tax payable in currency to satisfy a judgment rendered against it on county warrants. *Slayton v. Crittenden County*, 284 F. 858 (E.D. Ark. 1922).

### **Redemption.**

On redemption of land sold to state for taxes, county treasurer is required to accept county warrants for portion of taxes owing the county. *Bradford v. Burrow*, 188 Ark. 380, 65 S.W.2d 554 (1933).

### **Special Law.**

Acts 1917, No. 94, providing for the registration of warrants of Johnson County by treasurer and for their redemption by him in order of their presentation did not, expressly or impliedly, prohibit their acceptance by collector in payment of taxes. *Bartlett v. Willis*, 147 Ark. 374, 227 S.W. 596 (1921).

### **Warrants Receivable.**

Where county warrants tendered in payment of taxes levied to pay county indebtedness existing at the adoption of the Arkansas Constitution of 1874 afforded no evidence that the allowance upon which they were issued was for county indebtedness prior to the adoption of the constitution, and were subsequent thereto, and drawn upon fund appropriated for county expenditures, collector was to refuse them. *Loftin v. Watson*, 32 Ark. 414 (1877); *Hughes v. Ross*, 38 Ark. 275 (1881) (preceding decisions under prior law).

A warrant issued in payment of a claim before it is due is not receivable for taxes until the claim is due. *Vale v. Buchanan*, 98 Ark. 299, 135 S.W. 848 (1911).

## **26-35-505. County collector to receive warrants at par.**

(a) No county collector or deputy county collector shall, either directly or indirectly, contract for or purchase any orders or warrants issued by the county of which he or she is collector, or any state warrants, town orders, or the orders or warrants of any city, town, or other body politic for which he or she is the collector of taxes, at any discount whatever upon the sum due on those orders or warrants.

(b) If any county collector or deputy county collector, directly or indirectly, contracts for, purchases, or procures any orders or warrants at any discount whatever upon the sum for which they are respectively issued, he or she shall not be allowed, on settlement, the amount of the warrants or orders, or any part thereof, and shall also forfeit the whole amount due on the warrants or orders and the sum of one hundred dollars (\$100) for each and every breach of the provisions of this section, to be recovered in a civil action at the suit of the state for the use of the county.

(c)(1) The Treasurer of State or the person to whom the county collector of any county is required to return the state, county, city, town,

village, school, or road tax is, respectively, prohibited from receiving from any county collector any warrants, orders, or bonds in payment of taxes collected by him or her or his or her deputies unless with the warrants, orders, or bonds, the county collector shall file his or her affidavit with the Treasurer of State or the person entitled to receive the tax, stating therein that all warrants, orders, and bonds were received at their par value and that he or she has faithfully performed his or her duties as prescribed in this section.

(2) Whoever swears falsely in this affidavit is guilty of perjury and, upon conviction, shall be punished by confinement in the state penitentiary for not less than one (1) nor more than three (3) years.

**History.** Acts 1869, No. 40, § 2, p. 92; C. & M. Dig., § 10048; Pope's Dig., § 13807; A.S.A. 1947, § 84-930.

### 26-35-506. Credit cards.

(a) All county collectors may accept payment of county property taxes, penalties, and associated costs by an approved credit card or debit card.

(b)(1) As authorized by subsection (a) of this section, all county collectors may enter into contracts with credit card companies and may pay the fees normally charged by those companies for allowing the county collector to accept their cards as payment.

(2)(A) When a taxpayer pays his or her property taxes by an approved credit card, the county collector shall assess a service fee equal to the amount charged to the county collector by the credit card issuer.

(B) This charge may be added to and become part of any underlying obligation.

**History.** Acts 1999, No. 588, § 1.

## SUBCHAPTER 6 — COUNTY COLLECTORS

### SECTION.

26-35-601. Personal property taxes to be collected with real estate taxes.

26-35-602. Tax money to be kept in separate account.

26-35-603. Moneys paid over upon resignation.

### SECTION.

26-35-604. Death of county collector — Duties of successor.

26-35-605. Extension of time.

26-35-606. Collection of real and personal property taxes.

26-35-607. [Repealed.]

**Effective Dates.** Acts 1883, No. 114, § 226: effective on passage.

Acts 1931, No. 41, § 14: approved Feb. 18, 1931. Emergency clause provided: "Because of economic conditions and bank

failures the county funds in many of the counties of the State are in the process of liquidation in failing banks, and many problems have arisen for proper protection of the public funds and the procuring

of bonds for the officials in charge thereof, an acute situation has arisen wherein the counties and officials need immediate co-operation and advice and with the passage of this Act all the laws now in effect respecting the auditing of county officers

are repealed, an emergency now exists seriously affecting the peace, health and safety of the people and this Act shall take effect and be in full force from and after its passage."

### RESEARCH REFERENCES

**Am. Jur.** 72 Am. Jur. 2d, State Tax., § 881 et seq.      **C.J.S.** 84 C.J.S., Tax., § 645 et seq.

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### **26-35-601. Personal property taxes to be collected with real estate taxes.**

(a) Each county collector in this state shall be charged with the responsibility of collecting personal property taxes shown to be due by the taxpayer as reflected by the records in the county collector's office at the time the taxpayer pays the general taxes due on real estate.

(b) Any county collector willfully accepting payment of general real estate taxes without requiring the payment of personal property taxes due as reflected by the records in the county collector's office shall be deemed guilty of a misdemeanor and upon conviction shall be fined in a sum not less than twenty-five dollars (\$25.00) nor more than one hundred dollars (\$100).

(c)(1) Except as provided in subdivisions (c)(2)-(4) of this section, it is the intention of this section to require the collection of personal property taxes as reflected by the records in the office of the county collector and to prevent a taxpayer from paying and the county collector from receiving payment of general real estate taxes without payment of personal property taxes if any personal property taxes are shown to be due.

(2) The provisions of this section shall not prevent any person, firm, partnership, or corporation from paying general real estate taxes on property securing the payment of indebtedness due the person, firm, partnership, or corporation seeking to pay the taxes.

(3) Notwithstanding the other provisions of this section, a county collector shall accept payment of general real estate taxes on a parcel of property at the time the ownership of the property is being transferred if the taxpayer transferring title to the property has paid all delinquent personal property taxes.

(4) Furthermore, a purchaser in a foreclosure sale shall not be responsible for the payment of the personal property taxes required to be paid by this section.

**History.** Acts 1951, No. 243, §§ 1-3; A.S.A. 1947, §§ 84-937 — 84-939; Acts 1999, No. 994, § 1; 2001, No. 1286, § 1.



## RESEARCH REFERENCES

**U. Ark. Little Rock L. Rev.** Survey of Tax Law, 24 U. Ark. Little Rock L. Rev. 613.  
 Legislation, 2001 Arkansas General Assembly, Tax Law, 24 U. Ark. Little Rock L. Rev. 613.

## CASE NOTES

**Foreclosure Sales.**

A purchaser at a foreclosure sale is not responsible for the personal property taxes required to be paid by this section.

United States v. Massey, 568 F. Supp. 1369 (W.D. Ark. 1983).

**Cited:** Aldridge v. Tyrrell, 301 Ark. 116, 782 S.W.2d 562 (1990).

**26-35-602. Tax money to be kept in separate account.**

(a)(1) The Director of the Division of Local Affairs and Audits of the Division of Legislative Audit shall require every county collector of taxes to keep any and all tax money collected in a separate account from all other money which the county collector may have in his or her possession.

(2) A county collector shall have no authority to check on this account except in favor of a treasurer or depository to whom he or she is required to pay the money or to himself or herself for commission or salary already earned.

(b)(1)(A) Failure to comply with this section on the part of a county collector shall be a violation and shall render him or her liable to a penalty of not less than twenty-five dollars (\$25.00).

(B) Each day's failure shall be considered a separate offense.

(2) Upon finding that public funds and private funds are being jointly deposited or improperly disbursed under this section, the director shall notify immediately the bondsmen of the offending officer and the public of the violation.

**History.** Acts 1931, No. 41, § 4; Pope's Dig., § 1722; A.S.A. 1947, § 84-936; Acts 2005, No. 1994, § 169.

**26-35-603. Moneys paid over upon resignation.**

(a)(1) Any county collector who shall resign, be removed, or be disqualified shall pay over all moneys, which may be in his or her hands, due the state, county, city, town, or school district, to his or her successor in office and take duplicate receipts therefor.

(2) One (1) of the receipts shall be filed with the county clerk and the other retained by the county collector.

(b) The county clerk shall certify to the Auditor of the State the amount of the receipt, and it shall be the duty of the county collector charged therewith to pay it into the treasury in the same manner and at the same time as regular revenues are to be paid.

(c) In the receipts, it shall be specified particularly on what account the moneys mentioned were received, whether from taxes or from other sources.

**History.** Acts 1883, No. 114, §§ 109, 10041; Pope's Dig., §§ 13786, 13787; 110, p. 199; C. & M. Dig., §§ 10040, A.S.A. 1947, §§ 84-911, 84-912.

#### **26-35-604. Death of county collector — Duties of successor.**

(a) Whenever any county collector dies after he or she has received the tax books for any year and before he or she has collected the taxes charged therein, his or her legal representative shall hand at once to his or her successor, as soon as he or she is appointed and qualified, the tax books and pay at once all moneys, less his or her commission, which have been collected by the deceased county collector from all sources then in his or her hands.

(b)(1) The new county collector shall execute receipts in triplicate, to be attested by the county clerk, for the tax books so delivered and showing the amount already collected upon them and the amount uncollected.

(2)(A) The new county collector shall also execute receipts in triplicate for the amount of taxes collected by the deceased county collector from all sources and paid over to him or her by the executor or administrator, one (1) of which shall be certified by the county clerk to the Auditor of State, who shall charge the new county collector with the balance of the state taxes due on the tax book and the amount paid over to him or her by the executor or administrator of the deceased county collector.

(B) Another receipt shall be filed with the county clerk, who shall charge the new county collector with the balance of taxes due on the tax books and with the amount paid over by the executor or administrator.

(c) The third receipt shall be given to the executor or administrator of the deceased county collector.

**History.** Acts 1883, No. 114, §§ 107, 10039; Pope's Dig., §§ 13784, 13785; 108, p. 199; C. & M. Dig., §§ 10038, A.S.A. 1947, §§ 84-909, 84-910.

#### **26-35-605. Extension of time.**

(a) The Governor may, by proclamation, extend the time when the penalty shall attach for making distraint, returning delinquent list, advertising and selling delinquent lands, making settlement and paying over the revenue, and for the performance of any other duty by the county collectors so that the taxpayer may have the same time to pay the taxes and the county collector have the same time to perform the duties of his or her office as allowed by law in case the failure or vacancy had not occurred.

(b) The Governor shall, in his or her proclamation, fix the time for the performance of the acts mentioned in this section. A copy shall be filed in the office of the county clerk and recorded in the records of the county court by the county clerk.

(c) The proclamation shall be published in some newspaper in the county for two (2) weeks if a newspaper is published therein.



(d) All acts and duties performed in the time fixed in the proclamation shall be as valid and binding as if performed in the time fixed by the general law.

**History.** Acts 1875, No. 76, § 5, p. 165; C. & M. Dig., § 10037; Pope's Dig., § 13783; A.S.A. 1947, § 84-908.

## 26-35-606. Collection of real and personal property taxes.

(a) Any county collector may contract with one (1) or more financial institutions to act as his or her agents to receive real and personal property tax payments on his or her behalf.

(b) Tax payments received under a contract as provided for in this section shall be collected at the same time and in the same manner as all other property tax payments, and no payments shall be collected after the last payment day established by law.

(c) A financial institution receiving tax payments under a contract as provided for in this section, shall, on the first working day of each week, transmit to the county collector all property taxes received during the preceding week.

(d) As used in this section, "financial institution" means any organization or enterprise which receives deposits and forwards checks, drafts, or orders for collection and which is subject to state or federal regulation.

(e) Nothing in this section shall permit a county collector to make any payment to a financial institution for receiving real and personal property taxes as provided in this section.

**History.** Acts 1991, No. 232, §§ 1-4.

## 26-35-607. [Repealed.]

**Publisher's Notes.** This section, concerning cost of collecting tax, was repealed

by Acts 2009, No. 531, § 1. The section was derived from Acts 1991, No. 1165, § 1.

## SUBCHAPTER 7 — TAX COLLECTION

### SECTION.

26-35-701. [Repealed.]

26-35-702. Location — Notice.

26-35-703. Discontinuance of township visits.

### SECTION.

26-35-704. Tax books at different sites.

26-35-705. Mailing tax statements.

26-35-706. Postage fee — Disposition.

**Cross References.** Collecting taxes not on books, penalty, § 26-2-110.

Payment of funds into county treasury, § 26-39-201.

**Effective Dates.** Acts 1929, No. 40, § 5: approved Feb. 21, 1929. Emergency

clause provided: "It is ascertained and hereby declared that on account of the extreme bad weather on some of the days during the time of collection of taxes it is a hardship on the collector, and inconvenient for him to be in each township at

specified times, and on account of this condition very few persons appear in the townships to pay their taxes, but if the collector remains at the county site, or sites, the taxpayers may select their time between the 1st of January and April 10th, to pay their taxes; therefore, an immediate operation of this Act is essential for a protection of the public safety and convenience, and an emergency is therefore declared, and this Act shall take effect and be in force from and after its passage."

Acts 1931, No. 324, § 6: became law without Governor's signature, Apr. 2, 1931. Emergency clause provided: "It is ascertained and hereby declared that on account of the extreme bad weather on some of the days during the time of collection of taxes it is a hardship on the collector, and inconvenient for him to be in each township at specified times, and on account of this condition very few persons appear in the townships to pay their taxes, but if the collector remains at the county site, or sites, the taxpayers may select their time between the 1st of January and April 10th, to pay their taxes; therefore, an immediate operation of this Act is essential for a protection of the public safety and convenience, and an emergency is therefore declared, and this Act shall take effect and be in force from and after its passage."

Acts 1969, No. 234, § 3: became law without Governor's signature, Mar. 11, 1969. Emergency clause provided: "It is hereby found and determined by the General Assembly that the requirement that the collector visit the various townships or precincts in his county for the purpose of collecting taxes is burdensome and costly; that with the present modes of rapid transportation this procedure is no longer necessary and causes undue inconvenience to the collector and to the taxpayers of the county; and that in order to remedy this situation, it is necessary that this Act become effective immediately. Therefore, an emergency is hereby declared to exist and this Act, being necessary for the immediate preservation of the public peace, health and safety, shall become effective from and after its passage and approval." Approved: March 11, 1969.

Acts 1987, No. 324, § 3: Mar. 19, 1987. Emergency clause provided: "It is hereby found and determined by the General As-

sembly that many county tax collectors mail tax statements as a courtesy to taxpayers; that they should be allowed to recover the expense of processing and mailing the statements; that this Act allows for the recovery of those expenses and should be given effect immediately so that it may be implemented as soon as possible. Therefore, an emergency is hereby declared to exist and this Act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1989, No. 372, § 4: Mar. 7, 1989. Emergency clause provided: "It is hereby found and determined by the General Assembly that sheriffs and collectors should mail tax statements no later than July 1 of each year; and that unless this emergency clause is adopted this Act may not go into effect before July 1 of this year, but it should go into effect as soon as possible in order to give notice to the sheriffs and collectors at the earliest date of requirements of this law. Therefore, an emergency is hereby declared to exist and this Act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1993, No. 791, § 10: Mar. 30, 1993. Emergency clause provided: "It is hereby found and determined by the General Assembly that the laws relating to the collection, redemption and sale of tax delinquent real property are in need of clarification; that Arkansas Courts have repeatedly voided tax deeds in instances where the county has not strictly complied with statutes; that such holdings have placed a cloud on tax deeds issued by the Commissioner of State Lands; that the present method whereby the Commissioner of State Lands disposes of tax delinquent land meets due process requirements; consequently, when the Commissioner of State Lands complies with the statutes set forth for his office to follow, tax deeds issued should not be void or voidable due to defects in the county procedure, except in cases where taxes have actually been paid. Further, the present situation has a chilling effect on the collection of taxes and encourages the nonpayment of taxes. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate

preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

### RESEARCH REFERENCES

**Am. Jur.** 72 Am. Jur. 2d, State Tax., § 866 et seq. **C.J.S.** 84 C.J.S., Tax., § 640 et seq.

### 26-35-701. [Repealed.]

**Publisher's Notes.** Former § 26-35-701, concerning applicability of Acts 1929, No. 40, was repealed by Acts 1989, No. 372, § 2. The former section was derived from Acts 1929, No. 40, § 4; 1931, No. 324, § 5; 1941, No. 24, § 1; 1941, No. 115, § 1; 1957, No. 363, § 1; A.S.A. 1947, § 84-918.

### 26-35-702. Location — Notice.

County sheriffs and county collectors shall be permitted to collect all taxes at the county seats of the respective counties, after having given notice to be published for four (4) weeks in some newspaper published in the county and by posting notices in three (3) public places in each township to the effect that taxes are due and payable at the time specified in § 26-35-501 and that the books will be kept at the county site of the county for the collection of taxes for the time mentioned.

**History.** Acts 1929, No. 40, § 1; 1931, No. 324, § 2; A.S.A. 1947, § 84-915.

### CASE NOTES

#### ANALYSIS

Construction.  
Location.  
Notice.

#### Construction.

Provision in Acts 1887, No. 92, § 41, that collector should attend at his office at the county seat "from" the 10th day of April was a clerical error, and the word "from" should have read "until." Boles v. McNeil, 66 Ark. 422, 51 S.W. 71 (1899) (decision under prior law).

#### Location.

It is not necessary for collector to maintain his office in courthouse to collect taxes. McGregor v. Cain, 177 Ark. 474, 7 S.W.2d 13 (1928) (decision under prior law).

#### Notice.

Evidence insufficient to show proper notice was given when it was not shown that witness was official who would have known about giving of the notice. Schuman v. Allgood, 214 Ark. 847, 218 S.W.2d 712 (1949).

### 26-35-703. Discontinuance of township visits.

(a) In all counties, including those having two (2) or more levying courts or two (2) or more judicial districts, in which the county collector is required by law to visit each precinct or township in the county for the purpose of collecting taxes due, the county collector shall not be



required to make these visits but shall publish notice and collect the taxes as provided by § 26-35-702.

(b) In any county where the county collector is required to go to the various townships, he or she shall publish a notice in a newspaper stating that his or her visits to the several townships will be discontinued. The notice shall state where the taxes may be paid, and, where there are two (2) or more county sites, the notice shall advise the dates upon which taxes may be paid at the respective sites.

**History.** Acts 1929, No. 40, § 2; 1931, No. 324, § 3; 1969, No. 234, § 1; A.S.A. 1947, §§ 84-915.1, 84-916.

### **26-35-704. Tax books at different sites.**

(a) Where there are two (2) or more county sites, the tax books shall be kept at one (1) site part of the time and at the other site part of the time, the time to be divided between the two (2) or more sites as in the judgment of the county collector will be proper.

(b) Where there are two (2) or more sites, the notices shall state the dates between which the county collector will be at each county site.

**History.** Acts 1929, No. 40, § 3; 1931, No. 324, § 4; A.S.A. 1947, § 84-917.

## **CASE NOTES**

### **Multiple Sites.**

Collector held required to attend at both county sites where county was divided

into two districts. *Hare v. Carnall*, 39 Ark. 196 (1882) (decision under prior law).

### **26-35-705. Mailing tax statements.**

No later than July 1 of each year, the county sheriff or county collector shall be required to mail statements of taxes due by any taxpayer to the address provided by the taxpayer. In the event that the address of the taxpayer changes, the taxpayer has an obligation to furnish the correct address.

**History.** Acts 1929, No. 40, § 4; 1931, No. 324, § 5; 1941, No. 24, § 1; 1941, No. 115, § 1; 1957, No. 363, § 1; A.S.A. 1947, § 84-918; Acts 1989, No. 372, § 1; 1993, No. 791, § 1.

## **RESEARCH REFERENCES**

**U. Ark. Little Rock L. Rev. Note,** Constitutional & Property Law — Fourteenth Amendment Due Process Clause & Notice to Be Heard — It Felt So Right But Was All So Wrong: United States Supreme Court Rules Arkansas's Tax-Foreclosure

Notice Procedure Fails to Satisfy Due Process Clause When Certified Mail Notice Returns "Unclaimed" (*Jones v. Flowers*, 547 U.S. 220, 126 S. Ct. 1708, 164 L. Ed. 2d 415, 2006 U.S. LEXIS 3451 (2006)), 30 U. Ark. Little Rock L. Rev. 179.



# CASE NOTES

## Notice.

Tax forfeiture sale of the real property of a nonresident landowner was approved because the landowner moved its corporate office from Illinois to California and did not notify the Commissioner of State Lands of the change of address as required; thus, when the Commissioner mailed the landowner notice of the delinquency and notice of the tax forfeiture sale to the landowner's old address, and published notice in newspapers, the Commissioner performed all the acts that it was required to perform. *Tsann Kuen Enters. Co. v. Campbell*, 355 Ark. 110, 129 S.W.3d 822 (2003).

The Commissioner of State Lands provided adequate notice to a prior owner of a tax deficiency and tax sale as required by § 26-37-301 where there was some confusion at the county level as to the last

known address, the commissioner mailed the notice to the address certified by the county, and the former owner had not furnished its correct address as required by this section. *Mays v. St. Pat Props., LLC*, 357 Ark. 482, 182 S.W.3d 84 (2004), cert. denied, 543 U.S. 943, 125 S. Ct. 353, 160 L. Ed. 2d 255 (2004).

Although this section provided strong support for the argument by the Commissioner of State Lands that mailing a certified letter to a property owner at the property's address was reasonable, it did not alter the reasonableness of the Commissioner's position that he was not required to do more when the notice was promptly returned "unclaimed." *Jones v. Flowers*, 547 U.S. 220, 126 S. Ct. 1708, 164 L. Ed. 2d 415 (2006).

**Cited:** *Jones v. Flowers*, 359 Ark. 443, 198 S.W.3d 520 (2004).

## 26-35-706. Postage fee — Disposition.

(a) Every county collector who mails tax statements may charge the taxpayers a postage fee not to exceed the cost of first-class postage to defray the expense of processing and mailing tax statements.

(b) The postage fee shall be noted on each tax statement and shall be paid at the same time or before the tax is paid.

(c) The taxpayer's receipt shall include the amount of postage fee paid.

(d)(1) Postage fees received shall be accounted for on the county collector's final settlement.

(2) The county collector may use the fees to purchase postage, and any amount of fees collected in any month which are not used for the purchase of postage that month shall be deposited into the county general fund.

**History.** Acts 1987, No. 324, § 1.

## SUBCHAPTER 8 — JUDICIAL APPEALS

### SECTION.

26-35-801. Appeals disposed of without delay.

### SECTION.

26-35-802. Payment not required pending assessment appeal.

**Effective Dates.** Acts 1959, No. 258, § 5; Mar. 25, 1959. Emergency clause provided: "It has been found and is declared by the General Assembly that many ap-

peals are pending in the courts of this State from orders of County Courts affecting the assessed value of property; that many such appeals will not be disposed of

prior to the time now fixed by law for County Clerks to extend taxes; that doubt exists whether County Clerks are now authorized to correct assessments found by the courts of this State to be erroneous; that many taxpayers may therefore be deprived of relief to which they are found to be entitled; and that enactment of this measure will protect such taxpayers from excessive assessments. Therefore, an emergency is declared to exist, and this Act being necessary for the preservation of the public peace, health and safety, shall take effect and be in force from the date of its approval.”

26-35-801. Appeals disposed of without delay.

The courts of this state shall expeditiously dispose of appeals from the county courts to the end that the revenues may be collected without unnecessary delay.

**History.** Acts 1959, No. 258, § 3; A.S.A. 1947, § 84-913.2.

26-35-802. Payment not required pending assessment appeal.

- (a) No tract or lot of real property shall be returned as delinquent for nonpayment of taxes nor shall any penalty be added to taxes due while there is pending in the circuit court or the Supreme Court an appeal from an order of the county court fixing the assessed value of property.
- (b) In the event there has been no final disposition of an appeal prior to the last day fixed by law for the payment of the taxes without penalty, the owner shall have thirty (30) days after final disposition of the appeal within which to pay taxes without penalty.

**History.** Acts 1959, No. 258, § 2; A.S.A. 1947, § 84-913.1.

SUBCHAPTER 9 — TAX REFUNDS

SECTION.	Disposition of residual funds.
26-35-901. Taxes erroneously assessed and paid.	
26-35-902. Award of attorneys’ fees —	

**Effective Dates.** Acts 1883, No. 114, § 226: effective on passage.  
Acts 1977, No. 822, § 3: Mar. 28, 1977.  
Emergency clause provided: “It is hereby found and determined that litigation pending in the circuit and chancery courts of this State may, upon final judgment, return or refund monies to taxpayers which were illegally exacted by counties, cities or towns and that the courts in which suits are pending need statutory

authority to award a portion of the recovery to attorneys of record. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force from and after its passage and approval.”  
Acts 1993, No. 279, § 5: Feb. 26, 1993.  
Emergency clause provided: “It is hereby found and determined by the General Assembly that significant confusion among

the courts of the state exists concerning the disposition of residual funds of illegal exaction cases and in order to protect the interests of the State of Arkansas and the residents thereof, an emergency is hereby

declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety shall be in full force and effect from and after its passage and approval."

### RESEARCH REFERENCES

**Am. Jur.** 72 Am. Jur. 2d, State Tax, § 1075.

### 26-35-901. Taxes erroneously assessed and paid.

(a)(1) When any person has paid taxes on any real property or personal property, erroneously assessed, as defined and described in § 26-28-111(c), upon satisfactory proof being adduced to the county court of this fact, the county court shall make an order directed to the county treasurer refunding to the person the amount of tax so erroneously assessed and paid.

(2) All erroneous assessment claims for property tax refunds shall be made within three (3) years from the date the taxes were paid.

(b) The general fund of the county shall be reimbursed by transfer to it from funds of the respective taxing units, and the amount contributed by each taxing unit shall be the amount of the erroneous payment received by the taxing unit.

**History.** Acts 1883, No. 114, § 209, p. § 13963; A.S.A. 1947, § 84-935; Acts 199; C. & M. Dig., § 10180; Pope's Dig., 1999, No. 572, § 8.

### CASE NOTES

#### ANALYSIS

County Court.  
Errors of Taxpayer.  
Refunds Allowed.  
Refunds Not Allowed.

#### County Court.

Circuit court was without jurisdiction and the claim against the county, tax assessor, city, and school district should have been filed in county court, pursuant to Ark. Const., Art. 7, § 28, because the taxpayers alleged that an erroneous assessment occurred for which they sought a refund of property taxes. *Muldoon v. Martin*, 103 Ark. App. 64, 286 S.W.3d 201 (2008).

#### Errors of Taxpayer.

To refund taxes "erroneously" paid refers to assessments that deviate from law

and are invalid for jurisdictional defects, and not to a case where a taxpayer neglects to deduct credits to which he is entitled. *Ritchie Grocer Co. v. Texarkana*, 182 Ark. 137, 30 S.W.2d 213 (1930).

#### Refunds Allowed.

Taxes illegally collected may be recovered. *Magnolia v. Sharman & Co.*, 46 Ark. 358 (1885).

A taxpayer who pays taxes in excess of what is due under a void order of county court has a remedy under this section to recover the excess payment. *First Nat'l Bank v. Norris*, 113 Ark. 138, 167 S.W. 481 (1914).

Proceeding of taxpayers for a refund is proper when a double assessment is unauthorized and erroneous. *Paschal v. Munsey*, 168 Ark. 58, 268 S.W. 849 (1925).



**Refunds Not Allowed.**

This section does not apply to an excessive valuation placed on property by a board of equalization. *Clay County v. Brown Lumber Co.*, 90 Ark. 413, 119 S.W. 251 (1909); *First Nat'l Bank v. Norris*, 113 Ark. 138, 167 S.W. 481 (1914).

Where a corporation's personal property was assessed in two different counties because of its failure to assess it, the corporation cannot complain of double taxation. *Beal-Doyle Dry Goods Co. v. Beller*, 105 Ark. 370, 150 S.W. 1033 (1912).

Section held not to apply to special road tax on lands belonging to nonresidents. *Walton v. Arkansas County*, 153 Ark. 285, 239 S.W. 1054 (1922).

If tax is voluntarily paid, excess amount cannot be recovered. *Williams v. Miller*

*Levee Dist.*, 179 Ark. 299, 15 S.W.2d 986 (1929).

Cable-services provider's suit seeking a tax refund under this section on grounds the Arkansas Public Service Commission wrongly included its intangible personal property in its ad valorem assessments was properly dismissed, as that claim should have been brought before the Commission, which had exclusive authority over such assessments and challenges thereto under §§ 26-24-103 and 26-26-1610. *Comcast of Little Rock v. Bradshaw*, 2011 Ark. 431, — S.W.3d — (2011).

**Cited:** *Texarkana Special Sch. Dist. v. Ritchie Grocer Co.*, 183 Ark. 881, 39 S.W.2d 289 (1931); *Board of Conference Claimants v. Phillips*, 187 Ark. 1113, 63 S.W.2d 988 (1933).

**26-35-902. Award of attorneys' fees — Disposition of residual funds.**

(a) It is the public policy of this state that circuit courts may, in meritorious litigation brought under Arkansas Constitution, Article 16, § 13, in which the circuit court orders any county, city, or town to refund or return to taxpayers moneys illegally exacted by the county, city, or town, apportion a reasonable part of the recovery of the class members to attorneys of record and order the return or refund of the balance to the members of the class represented.

(b) If, after expiration of a reasonable period of time for the filing of claims for the illegally exacted moneys as ordered by the circuit court, residual funds exist, said residual funds shall be deemed abandoned and escheat to the county, city, or town which exacted same.

**History.** Acts 1977, No. 822, § 1; A.S.A. 1947, § 84-4601; Acts 1993, No. 279, § 1.

**RESEARCH REFERENCES**

**Ark. L. Rev.** Note, Attorneys' Windfalls and Society's Pitfalls: *Butt v. Evans Law Firm, P.A., Attorneys' Fees in Class Action Suits Against Government Entities*, 57 Ark. L. Rev. 627.

**U. Ark. Little Rock L. Rev.** Annual Survey of Caselaw, Civil Procedure, 26 U. Ark. Little Rock L. Rev. 819.

**CASE NOTES****ANALYSIS**

Applicability.  
Final Judgment.  
Reconsideration.

**Applicability.**

This section clearly applies only to suits brought against counties, cities, or towns. *Bahil v. Scribner*, 265 Ark. 834, 581 S.W.2d 334 (1979).



Section held inapplicable to original decree entered before March 28, 1977. *Powell v. Henry*, 267 Ark. 484, 592 S.W.2d 107 (1980).

Attorney fees could not be awarded, in taxpayer's suit seeking an accounting and restitution of expense funds paid to a prosecuting attorney, since this section applies only to suits brought against any county, city, or town. *Munson v. Abbott*, 269 Ark. 441, 602 S.W.2d 649 (1980).

Where no refund of county or city money to taxpayers was ordered, this section did not apply. *City of Hot Springs v. Creviston*, 288 Ark. 286, 705 S.W.2d 415 (1986).

Attorney's fees are not to be allowed in an illegal exaction case in which no refund is sought. *Hamilton v. Villines*, 323 Ark. 492, 915 S.W.2d 271 (1996).

Where attorneys represented taxpayers in a class action lawsuit, the circuit court abused its discretion by applying the percentage of the attorneys' settlement fee against the settlement pool instead of the total amount claimed by the taxpayers.

*Butt v. Evans Law Firm, P.A.*, 351 Ark. 566, 98 S.W.3d 1 (2003).

### Final Judgment.

Section 16-22-309 specifically requires that judgment for attorney's fees be included in the final judgment entered in the action, but no such requirement appears in this section. *Stewart Title Guar. Co. v. Cassill*, 41 Ark. App. 22, 847 S.W.2d 465 (1993).

### Reconsideration.

Within 90 days after entry of order for attorneys' fees made by special judge, regular judge could vacate special judge's order and set matter down for reconsideration. *Henry v. Powell*, 262 Ark. 763, 561 S.W.2d 296 (1978).

**Cited:** *Vandiver v. Washington County*, 274 Ark. 561, 628 S.W.2d 1 (1982); *City of Little Rock v. Cash*, 277 Ark. 494, 644 S.W.2d 229 (1982); *Vachon v. City of Fort Smith*, 308 Ark. 636, 826 S.W.2d 277 (1992); *Hasha v. City of Fayetteville*, 311 Ark. 460, 845 S.W.2d 500 (1993); *Stratton v. Priest*, 326 Ark. 469, 932 S.W.2d 321 (1996).

## SUBCHAPTER 10 — RECORDS AND FORMS

### SECTION.

26-35-1001 — 26-35-1003. [Repealed.]  
26-35-1004. Tax receipt form.

### SECTION.

26-35-1005. Definition.

**Cross References.** Arkansas Governmental Compliance Act, § 10-4-301 et seq.

Furnishing of lists, blanks, and records by Arkansas Public Service Commission, § 26-26-701.

Tax books and records, § 26-28-101 et seq.

**Effective Dates.** Acts 1883, No. 114, § 226: effective on passage.

## 26-35-1001 — 26-35-1003. [Repealed.]

**Publisher's Notes.** These sections, concerning record of tax receipts, delivery of record book to county court, and the tax record form, were repealed by Acts 2003, No. 295, § 12. The sections were derived from:

26-35-1001. Acts 1883, No. 114, § 116, p. 199; C. & M. Dig., §§ 10059-10064;

Pope's Dig., §§ 13818-13823; A.S.A. 1947, § 84-933.

26-35-1002. Acts 1883, No. 114, § 117, p. 199; C. & M. Dig., § 10065; Pope's Dig., § 13824; A.S.A. 1947, § 84-934.

26-35-1003. Acts 1883, No. 114, § 116, p. 199; C. & M. Dig., § 10058; Pope's Dig., § 13817; A.S.A. 1947, § 84-932.

26-35-1004. Tax receipt form.

The county collector, whenever any taxes are paid, shall give the person paying them a receipt dated, numbered, and filled out so as to show by whom, on what, and amount of taxes paid, amount of land and personalty, and percentage rate at the foot of the receipts. The receipt shall be prepared for the purpose and, in case of land, distinctly specify it as it is described on the tax books. The receipt may be in the following form:

artaxreceiptfor20.tif

TAX RECEIPT FOR 20\_\_\_\_\_

Parts of section	Section	Township	Range	Acres	100ths	Valuation	No.	School Dist.

Total Valuation of real property as valued on tax books .....  
Value of personal property as per tax books .....

Total valuation of real and personal property taxed ..... \$ .....

	Dollars	Cts.	
State Tax, 1/2 mill, S. S. ....			REMARKS—The holder of this receipt is requested to examine it thoroughly, and, should there be a mistake in it, return it immediately for correction.
Sinking Fund Tax, 4 mills, cur. ....			
General School Tax, 2 mills, S. S. ....			
Asylum, 1/2 mill ....			
County General Tax — mills, C. S. ....			
Co. Debt. Tax, — mills, O. C. S. or cur. ...			
District School Tax, S. S. ....			
Corporation Tax, cur. ....			
Assessor's Penalty, S. S. ....			
Poll Tax, S. S. ....			

COLLECTOR'S OFFICE

\$..... County, Arkansas, 20\_\_\_\_  
Received of ..... Dollars,  
100's

Taxes for the year 20\_\_\_\_ upon the property herein described, as charged upon the Tax Books.  
.....  
Sheriff and Ex-Officio Collector of Taxes for ..... County, Arkansas.

History. Acts 1883, No. 114, § 115, p. 199; C. & M. Dig., § 10057; Pope's Dig., § 13816; A.S.A. 1947, § 84-931.

**26-35-1005. Definition.**

As used in this subchapter, “book” means either paper or computer storage and retrieval of tax information.

**History.** Acts 1999, No. 215, § 1.

**SUBCHAPTER 11 — DISASTER RELIEF INCOME TAX CHECK-OFF PROGRAM  
[TRANSFERRED]**

SECTION.

26-35-1101 — 26-35-1104. [Transferred].

**26-35-1101 — 26-35-1104. [Transferred].**

**Publisher’s Notes.** This subchapter has been transferred to § 26-51-2502.

**SUBCHAPTER 12 — BABY SHARON ACT [TRANSFERRED]**

SECTION.

26-35-1201 — 26-35-1205. [Transferred].

26-35-1206. [Repealed.]

**26-35-1201 — 26-35-1205. [Transferred].**

**Publisher’s Notes.** This subchapter has been transferred to § 26-51-2504.

**26-35-1206. [Repealed.]**

**Publisher’s Notes.** This section, concerning effective dates, was repealed by Acts 2007, No. 827, § 208. The section was derived from Acts 2003, No. 279, § 1.

**SUBCHAPTER 13 — MILITARY FAMILY RELIEF CHECK-OFF PROGRAM  
[TRANSFERRED]**

SECTION.

26-35-1301 — 26-35-1305. [Transferred].

**26-35-1301 — 26-35-1305. [Transferred].**

**Publisher’s Notes.** This subchapter has been transferred to § 26-51-2506.

# CHAPTER 36

## COLLECTION OF DELINQUENT TAXES

### SUBCHAPTER.

1. GENERAL PROVISIONS. [RESERVED.]
2. COLLECTION GENERALLY.
3. SETOFF AGAINST STATE TAX REFUND.

### SUBCHAPTER 1 — GENERAL PROVISIONS

[Reserved]

### SUBCHAPTER 2 — COLLECTION GENERALLY

#### SECTION.

- 26-36-201. Dates taxes due and payable.
- 26-36-202. Payment of delinquent taxes.
- 26-36-203. Publication of delinquent personal property tax list.
- 26-36-204. Striking of names on list.
- 26-36-205. List of delinquent officers.
- 26-36-206. Distraint of goods to pay delinquent personal property taxes.
- 26-36-207. Garnishment proceedings authorized.

#### SECTION.

- 26-36-208. Delinquent taxpayer relocating to another county.
- 26-36-209. Time and manner — Returns.
- 26-36-210. Counties under unit tax ledger system.
- 26-36-211. Liability of collector for property improperly sold.
- 26-36-212. Delinquent ad valorem taxes on interests in oil or gas.

**Preambles.** Acts 1887, No. 13 contained a preamble which read: "Whereas, 1ST. Lands have been sold to the State under proceedings purporting to have been had in the courts of this State by virtue of an Act of the General Assembly thereof entitled 'An Act to enforce the payment of Overdue Taxes,' approved March 12, 1881, when the taxes for the alleged nonpayment of which such lands were so sold under said proceedings and decrees of said courts, had been in fact paid prior to any such sales, proceedings or decrees of said courts; and,

"Whereas, 2D. Also the lands of many other persons were under like proceedings and decrees aforesaid had, by virtue of said act, sold to the State, where the owners thereof had paid taxes which they supposed were on such lands of their own, but which taxes so paid, owing to an

erroneous description in the numbers of the same afterwards were ascertained to be on other lands than their own, and their lands sold to the State as aforesaid; and,

"Whereas, 3D. Said overdue tax act was a novel proceeding in this State that was productive of hardships in other respects, and it is but just to them that the owners of land at the time of such sale to the State, should have a limited time to redeem the same therefrom, without loss to the State, provided said lands shall not have been sold by the State prior to any such application to redeem;

"Now, therefore...."

**Effective Dates.** Acts 1883, No. 114, § 226: effective on passage.

Acts 1887, No. 26, § 2: effective on passage.



Acts 1887, No. 92, § 58: effective on passage.

Acts 1925, No. 156, § 2: Mar. 11, 1925.

Acts 1935, No. 169, § 3: Mar. 21, 1935. Emergency clause provided: "Whereas the failure to pay personal property taxes has created a condition whereby it is difficult and almost impossible for many school districts and county and city governments to operate, and

"Whereas, the operation of the schools and the various units of government are necessary to the well being of the people of this State,

"Now, Therefore, an emergency is declared, and this Act being necessary for the immediate preservation of public peace, health and safety, it shall become effective immediately upon its passage and approval."

Acts 1935, No. 282, § 9: effective on passage.

Acts 1965, No. 114, § 3: effective on passage.

Acts 1985, No. 1089, § 4: Apr. 18, 1985. Emergency clause provided: "It is hereby

found and determined by the General Assembly that under present procedures several years may elapse between the time ad valorem taxes on working interests, royalty interests or overriding-royalty interests in oil or gas become delinquent and the time when such taxes are actually collected, and that such unreasonable delay places a serious hardship on the various taxing units, particularly school districts; that it is urgent that a procedure be established whereby taxing units may bring suits against delinquent taxpayers to recover that portion of the delinquent taxes, penalty and interest to which the plaintiff taxing unit is entitled; that this Act is designed to recognize such cause of action and should be given effect immediately. Therefore, an emergency is hereby declared to exist and this Act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1999, No. 1078, § 92: effective July 1, 2000.

## RESEARCH REFERENCES

**Am. Jur.** 72 Am. Jur. 2d, State Tax., § 866 et seq.

**C.J.S.** 84 C.J.S., Tax., § 640 et seq.

## 26-36-201. Dates taxes due and payable.

(a)(1) All taxes levied on real estate and personal property for the county courts of this state, when assembled for the purpose of levying taxes, are due and payable at the county collector's office between the first business day of March and October 15 inclusive.

(2) All taxes unpaid after October 15 are delinquent.

(b)(1) The county collector shall extend a penalty of ten percent (10%) against all delinquent taxpayers that have not paid their taxes within the time limit specified.

(2) The county collector shall collect the penalty provided in subdivision (b)(1) of this section.

(c) The county collector shall extend an additional penalty of ten percent (10%) upon all delinquent taxpayers if the taxpayers' delinquent personal property taxes are not satisfied or paid in full by October 15 following the purchase of a business or the assets, goods, chattels, inventory, or equipment of a business not in the ordinary course of business.

(d) A penalty shall not be assessed against a taxpayer who is a member of the United States armed forces, reserve component of the

armed forces, or the National Guard during the taxpayer's deployment plus one (1) tax year after the deployment ends.

(e) When October 15 falls on a Saturday, Sunday, or a holiday observed by the United States Postal Service, the taxes shall become due and payable the following business day that is not a holiday observed by the United States Postal Service.

**History.** Acts 1935, No. 282, § 1; Pope's Dig., § 13843; Acts 1975, No. 574, § 5; A.S.A. 1947, § 84-1001; Acts 1993, No. 984, § 1; 2005, No. 135, § 1; 2011, No. 821, § 4.

**Amendments.** The 2011 amendment substituted "October 15" for "October 10"

in (a)(1), (a)(2), and present (e); inserted "provided in subdivision (b)(1) of this section" in (b)(2); and inserted present (c) and redesignated the remaining subsections accordingly.

**Cross References.** Time to pay taxes — Installments, § 26-35-501.

### CASE NOTES

#### Not Adopted by Ordinance.

Specific statute dealing with when special improvement taxes became delinquent, § 14-86-1204, was applicable to a municipal water improvement district's foreclosure action against a taxpayer because the District never adopted the gen-

eral taxes provision of this section by an ordinance; thus, a portion of the District's foreclosure action was time barred. *Wilkins & Assocs. v. Vimy Ridge Mun. Water Improvement Dist.* No. 139, 373 Ark. 580, 285 S.W.3d 193 (2008).

### 26-36-202. Payment of delinquent taxes.

(a) No taxes returned delinquent shall be paid into the State Treasury except by the county collector.

(b) It shall be the duty of the county clerk to add a penalty of ten percent (10%) upon all taxes returned delinquent, which shall be collected in the manner provided for the collection of delinquent taxes.

**History.** Acts 1883, No. 114, § 127, p. 199; C. & M. Dig., § 10083; Acts 1925, No.

156, § 1; Pope's Dig., § 13844; A.S.A. 1947, § 84-1002.

### CASE NOTES

#### In General.

This section was not repealed by Acts 1911, No. 415, p. 361 (superseded by § 26-36-201). *Martels v. Wyss*, 123 Ark. 184, 184 S.W. 845 (1916).

**Cited:** *Rachels v. Stecher Cooperaage Works*, 95 Ark. 6, 128 S.W. 348 (1910); *Tallman v. Bennett*, 154 Ark. 42, 241 S.W. 362 (1922).

### 26-36-203. Publication of delinquent personal property tax list.

(a)(1)(A) No later than December 1 in each year, the county collector shall prepare a list of delinquent personal property taxes and deliver a copy of the list to a legal newspaper of the county.

(B)(i) Within seven (7) days thereafter, the newspaper shall publish the list.

(ii) The newspaper shall publish the list in at least seven-point type.

- (C) If the newspaper regularly publishes a total market coverage edition or supplement publication that has wider circulation within the county or district, the newspaper may publish the list in that edition or publication.
- (2) If there is no newspaper in the county or district, the publication shall be in the nearest newspaper having a general circulation in the county or district for which the list is being published.
- (b) The publication shall show, besides the name of the taxpayer, the taxpayer's school district and the total amount of taxes delinquent, including penalties. The publication shall be in substance as follows:

“DELINQUENT PERSONAL TAX LIST

The personal Tax Books of .... County reflect the following list of personal property to be delinquent for nonpayment of taxes for the year

Name	School District No.	Amount Due
.....	.....	.....
.....	.....	.....
.....	.....	.....
(ACRON, R. J. ....	C-11 ....	\$21.35)
(B & B MFG. CO. ....	S-1 ....	\$167.06)
.....	.....	.....

STATE OF ARKANSAS  
COUNTY OF .....

I, ....., Collector of Revenue within and for ..... County in the State of Arkansas, do hereby certify that the personal tax books of ..... County reflect the foregoing list of personal property to be delinquent for nonpayment of taxes for the year ..... Witness my hand this ..... day of ....., 20 ....

COLLECTOR FOR  
.....County, Arkansas

- .....”
- (c)(1) The newspaper publishing this list shall receive as publication cost the sum of one dollar and twenty-five cents (\$1.25) per name, per insertion, which sum, together with fifty cents (50¢) per name for the county collector preparing and furnishing the list, shall be charged to the delinquent taxpayer and shall be paid by the county collector from any moneys in the county collector's possession derived from payment of personal property taxes.
- (2) The receipt for the payment, verified by the certificate of the county clerk as to its correctness, shall entitle the county collector to a credit for the amount so paid.
- (d) This section shall be cumulative to all existing laws relative to the collection of personal property taxes.

**History.** Acts 1935, No. 169, §§ 1, 2; 1975, No. 574, § 4; 1981, No. 467, § 1; 1937, No. 345, § 1; Pope's Dig., § 13834; 1985, No. 953, § 1; A.S.A. 1947, §§ 84- Acts 1947, No. 379, § 3; 1949, No. 93, § 1; 1003, 84-1003n; Acts 1991, No. 1045, § 1; 1955, No. 81, § 1; 1969, No. 116, § 3; 1993, No. 986, § 1; 2001, No. 985, § 2.



**RESEARCH REFERENCES**

**Ark. L. Rev.** Rates for Legal Advertisements, 9 Ark. L. Rev. 394.

**CASE NOTES**

**Cited:** Newton v. Edwards, 203 Ark. 18, 155 S.W.2d 591 (1941).

**26-36-204. Striking of names on list.**

(a) The delinquent list, together with the fees allowed to any county collector, shall be delivered to his or her successor, and it shall be returned to the county clerk by the outgoing county collector for that purpose, and so on until the whole shall be collected.

(b) After the list has been returned two (2) years, the county court shall have power to strike all names of persons who, in the opinion of the county court, own no property out of which the taxes due on the list can be made by sale or otherwise.

(c) The county court shall have the authority to strike off the delinquent and assessment list at any time the names of persons who own mobile homes which are assessed as real property, improvement only, who, in the opinion of the county court, have vacated the jurisdiction or own no property out of which the taxes due can be made by sale or otherwise.

**History.** Acts 1883, No. 114, § 126, p. § 13841; Acts 1983, No. 674, § 1; A.S.A. 199; C. & M. Dig., § 10080; Pope's Dig., 1947, § 84-1004.

**26-36-205. List of delinquent officers.**

The county collectors shall make a delinquent list of all delinquent clerks and other officers required to pay to the county collectors the amount of revenue received by them, to be called a "list of delinquent officers."

**History.** Rev. Stat., ch. 128, § 65; C. & M. Dig., § 10081; Pope's Dig., § 13842; A.S.A. 1947, § 84-1005.

**Cross References.** Failure of collectors to account, § 26-39-501 et seq.

**26-36-206. Distraint of goods to pay delinquent personal property taxes.**

(a) At any time after October 15 in each year, after taxes may be due, the county collector shall distraint sufficient goods and chattels belonging to the person charged with taxes levied upon the personal property to pay the taxes due upon the personal property of the person and a penalty of twenty-five percent (25%) on the taxes due, which shall be collected by the county collector and paid into the county school fund, and the costs that may accrue and shall immediately proceed to advertise the sale of the goods and chattels in three (3) public places in



the county, stating the time when and the place where the goods and chattels shall be sold.

(b)(1) If the taxes for which property is distrained, and costs which shall accrue thereon are not paid before the day appointed for sale, which shall not be less than ten (10) days after taking the property, the county collector shall proceed to sell the same at public vendue, or so much thereof as will be sufficient to pay the taxes and the costs of the distress and sale.

(2) The county collector shall not distrain any goods and chattels for taxes levied on real property, except as provided in § 26-3-204.

(c)(1) The county collector is authorized and empowered to levy on and sell the goods and chattels of the person liable for taxes provided, in the same manner and under the same restrictions as goods and chattels are required to be levied and sold under execution on judgment at law, when not inconsistent with the provisions of this subchapter.

(2) No goods and chattels of any person shall be exempt from levy and sale.

(d) The county collector is allowed the same fees for making distress and sale of goods and chattels for the payment of taxes which are allowed by law to the county sheriff for making levy and sale of property on execution under § 21-6-307 for each delinquent taxpayer.

(e)(1) If a taxpayer operating a business in a county is delinquent in the payment of personal property taxes for personal property owned by or used in the business, then following the certification and publication of delinquency under § 26-36-203, the county collector may distrain goods or chattels of the taxpayer owned by or used in the business under subsection (a) of this section by publication of a Notice of Distrainment and Tax Sale in three (3) public places in the county or in a newspaper of general circulation in the county.

(2) The Notice of Distrainment and Tax Sale shall contain:

(A) The location, date, and time of the sale;

(B) The name of the taxpayer and business under which the goods or chattels to be sold is assessed;

(C) The principal sum of personal property taxes owed with a certification of the principal sum by the county collector;

(D) The following specific information:

“The goods or chattels of the taxpayer listed above located within \_\_\_\_\_ County, Arkansas, is under distrainment and shall be sold to satisfy the delinquency in the payment of personal property taxes under Arkansas Code § 26-36-206. Under Arkansas Code § 26-34-101, the taxes assessed on real and personal property shall constitute a lien entitled to preference over all other judgments, executions, or encumbrances, or liens whensoever created. Under Arkansas Code § 4-1-201, a buyer in ordinary course of business does not include a person that acquires goods in a transfer in bulk or as security for or in total or partial satisfaction of a money debt.”; and

(E) A statement that it is a Class B misdemeanor to remove, destroy, or deface the Notice of Distrainment and Tax Sale or to interfere

or obstruct the sale of or the access to the goods or chattels on the date of the sale by the county collector, the county sheriff, or their deputies.

(3) The county collector shall provide a copy of the Notice of Dstraint and Tax Sale to the taxpayer by regular mail or by posting a copy at the physical location where the goods or chattels are held.

(4) The Notice of Dstraint and Tax Sale shall be posted conspicuously at the location of the sale.

(5) In lieu of physically securing the goods or chattels or storing or transporting the goods or chattels to another location for sale, the sale may be held at any place of business, warehouse, storeroom, or facility owned or under the possession of the taxpayer, including without limitation the current location of the goods or chattels to be sold.

(6) It is a Class B misdemeanor to knowingly remove, destroy, or deface a Notice of Dstraint and Tax Sale posted under this section or to knowingly interfere or obstruct the sale or access of the county collector, the county sheriff, or their deputies to the goods or chattels on the date of the sale.

**History.** Acts 1883, No. 114, §§ 118, 120, p. 199; 1887, No. 26, § 1, p. 32; 1887, No. 92, § 42, p. 143; C. & M. Dig., §§ 10068, 10070; Pope's Dig., §§ 13829, 13831; A.S.A. 1947, §§ 84-1015, 84-1017; Acts 2009, No. 555, §§ 1, 2; 2011, No. 175, § 11.

**Amendments.** The 2009 amendment rewrote (d); and added (e).

The 2011 amendment, in (a), substituted "October 15" for "October 10," "the sale of the goods and chattels" for "it" and "goods and chattels" for "property."

**Cross References.** Dstraint before delinquency, § 26-35-201.

Publication of notices, § 16-3-101.

## CASE NOTES

**Cited:** Boles v. McNeil, 66 Ark. 422, 51 S.W. 71 (1899); Martels v. Wyss, 123 Ark. 184, 184 S.W. 845 (1916); Arkansas

County v. Burris, 308 Ark. 490, 825 S.W.2d 590 (1992).

## 26-36-207. Garnishment proceedings authorized.

(a)(1) If the tax upon personal property, moneys, credits, investments in bonds, stocks, joint-stock companies, or otherwise of a person, association, or corporation remains unpaid after October 15 in any year and the county collector is unable to find any personal property of the person, association, or corporation on which to levy to make the taxes due, then the county collector shall present the account for taxes to any person who may be indebted to the person, association, or corporation, and demand the payment of the taxes.

(2) The person to whom the account for taxes is presented shall pay over to the county collector the amount of the taxes that the person owes up to the amount of the debt and take the county collector's receipt for the payment. The receipt shall be taken in all courts of this state as payment on the taxpayer's indebtedness to the full amount expressed on the county collector's receipt.

(b) If the person should fail or refuse, on demand, to pay over the amount of the tax that he or she owes to the county collector, the county collector shall file a statement of the amount of the tax with the person so refusing, which shall operate as a garnishment upon the person so served. The county collector shall proceed to collect the taxes in the manner fixed by law in cases of garnishment.

(c) No person shall be compelled to pay any debt before it may be due nor a greater amount than he or she may be owing the person, corporation, or association.

(d) The cost of garnishment shall be paid by the party refusing to pay the taxes when so requested.

**History.** Acts 1883, No. 114, § 119, p. 199; 1887, No. 92, § 43, p. 143; C. & M. Dig., § 10069; Pope's Dig., § 13830; A.S.A. 1947, § 84-1016; Acts 2011, No. 175, § 12.

**A.C.R.C. Notes.** Pursuant to Arkansas Constitution, Amendments 57 and 71, and § 26-3-302, intangible personal property and "items of household furniture and furnishings, clothing, appliances, and other personal property used within the home, if not held for sale, rental, or other commercial or professional use", are exempt from ad valorem taxes. Additional ad valorem tax exemptions for public

property, churches, cemeteries, schools, libraries, charities, and textile mills are found in Arkansas Constitution, Article 16, § 5(b), and Arkansas Constitution, Amendment 12. See also § 26-3-301 et seq.

**Amendments.** The 2011 amendment subdivided (a) into (a)(1) and (2); substituted "October 15" for "October 10" in (a)(1); inserted "county" preceding "collector" twice in (a)(1) and once in (a)(2); and, in (a)(2), substituted "the account for taxes is" for "it shall be," inserted "the person owes up to the amount of the debt," and substituted "the taxpayer's" for "his."

## 26-36-208. Delinquent taxpayer relocating to another county.

(a) Each county collector in making returns of the delinquent lists of personal property to the county clerk shall note on the margin of the returns the county in this state to which any delinquent taxpayer may have removed or resides in, with the date of his or her removal, if the county collector is able to ascertain that fact.

(b) The county clerk shall immediately forward to the county clerk of any county of this state, which any delinquent taxpayer has removed to or resides within, a certified statement or account of the taxes so assessed and not paid. The certified statement shall specify the value of the property on which the taxes were levied and the amount of the taxes levied thereon, with the penalty and cost. The county collector shall proceed to collect the delinquent taxes in the same manner, and with like authority, as prescribed in this subchapter for collecting delinquent taxes upon personal property and shall make return thereof to the county collector of the proper county.

**History.** Acts 1883, No. 114, § 125, p. 199; C. & M. Dig., §§ 10078, 10079; Pope's

Dig., §§ 13839, 13840; A.S.A. 1947, § 84-1018.



**26-36-209. Time and manner — Returns.**

(a) The county collector may collect, at any time, all delinquent personal property tax in his or her county, or any that may be sent from another county, by the sale of property or otherwise, and the county collector shall make returns of the amount so collected to the proper counties and officers.

(b)(1) The county collector shall pay over to the county treasurer on the first day of each month or within five (5) working days after the first day of each month all amounts collected for his or her county under this section.

(2) However, upon a certificate of distribution of the amounts collected under this section being prepared by the county clerk, county collector, or other county officer designated pursuant to § 26-28-102(a), which certificate shall be issued on or before the thirtieth day of each month, the county treasurer shall transfer to the various funds the amount due each fund.

(c)(1) All costs associated with such delinquent personal property taxes shall be prorated to the original taxing entities.

(2) All penalties shall be divided fifty percent (50%) to the county general fund and fifty percent (50%) to the county common school fund if that county's common school fund was getting fifty percent (50%) at the time of the enactment of this subsection.

(d) For purposes of this section, the costs and penalties associated with delinquent personal property taxes shall not be considered a portion of the county collector's revenue in calculating excess commissions.

**History.** Acts 1883, No. 114, § 125, p. 199; C. & M. Dig., §§ 10078, 10079; Pope's Dig., §§ 13839, 13840; A.S.A. 1947, § 84-1018; Acts 1997, No. 213, § 1; 1999, No. 1078, § 88; 2009, No. 721, § 5.

**A.C.R.C. Notes.** Regarding the phrase "at the time of the enactment of this subsection" in subdivision (c)(2) of this

section, Acts 1997, No. 213, was signed by the Governor on February 19, 1997.

**Amendments.** The 2009 amendment inserted "or other county officer designated pursuant to § 26-28-102(a)" in (b)(2), and made minor stylistic and punctuation changes.

**26-36-210. Counties under unit tax ledger system.**

The county collector in any county of this state utilizing the unit tax ledger system for the collection of taxes, pursuant to § 26-28-201 et seq., may appoint a delinquent tax collector for the purpose of collecting the delinquent taxes in his or her county.

**History.** Acts 1965, No. 114, § 1; A.S.A. 1947, § 84-1020.

**26-36-211. Liability of collector for property improperly sold.**

Any collector of any county, city, or town in this state who returns to any person, personal property, or real estate delinquent, by whom or



upon which taxes have been paid or advertises for sale, offers to sell, or sells any real or personal property upon which the taxes have been paid for the year for which they shall be returned delinquent, advertised, offered for sale, or sold shall forfeit and pay to the owner of the property, or any other person interested therein or who may be injured thereby, a sum equal to double the taxes, penalty, and costs charged on the personal property or land together with the actual damages as may have been sustained. For any sum so recovered, the officer and his or her sureties shall be liable on his or her official bond.

**History.** Acts 1883, No. 114, § 114, p. 199; C. & M. Dig., § 10047; Pope's Dig., § 13806; A.S.A. 1947, § 84-1019.

### **26-36-212. Delinquent ad valorem taxes on interests in oil or gas.**

(a)(1) When the ad valorem taxes on working interests, royalty interests, or overriding royalty interests in oil or gas of any taxpayer is delinquent for a period of one hundred eighty (180) days or more, any one (1) or more taxing units which are entitled to a portion of the delinquent taxes when collected shall have a cause of action against the delinquent taxpayer for that portion of the delinquent taxes and costs of collection, including the penalty and interest thereon, to which the taxing units are entitled, plus a reasonable attorney's fee.

(2)(A) Any such action shall be brought in the circuit court of the county in which the delinquent taxpayer resides or in which property of the delinquent taxpayer is situated.

(B) Any judgment awarded a taxing unit in such cause of action shall be enforceable to the same extent and in the same manner as other civil judgments.

(b)(1) Any taxpayer offering to redeem tax-delinquent property after an action has been filed as authorized in this section shall be required to pay costs, including attorney fees, incurred by any taxing unit in pursuing its remedies under this section.

(2) When any judgment rendered against a delinquent taxpayer pursuant to this section is satisfied, the tax liability on the property and the amount required to be paid to redeem the property shall be reduced by the amount of the taxes, penalty, and interest included in the judgment.

**History.** Acts 1985, No. 1089, §§ 1, 2; A.S.A. 1947, §§ 84-1022, 84-1023.

## **SUBCHAPTER 3 — SETOFF AGAINST STATE TAX REFUND**

### **SECTION.**

26-36-301. Purposes.

26-36-302. Construction.

26-36-303. Definitions.

### **SECTION.**

26-36-304. Remedy cumulative.

26-36-305. Setoffs for claimant agencies.

26-36-306. Minimum sum collectible.

## SECTION.

- 26-36-307. Submission of claims — Information.
- 26-36-308. Procedure for setoff generally.
- 26-36-309. Notification of debtor.
- 26-36-310. Hearing procedure.
- 26-36-311. Appeals.
- 26-36-312. Certification of debt.
- 26-36-313. Notice of final setoff.
- 26-36-314. Priorities of claims.

## SECTION.

- 26-36-315. Joint refunds.
- 26-36-316. Disposition of proceeds collected.
- 26-36-317. Accounting of payments.
- 26-36-318. Interest.
- 26-36-319. Disclosure of information.
- 26-36-320. Rules and regulations.
- 26-36-321. Setoff for debt to Internal Revenue Service.

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**Cross References.** Claims for refunds, § 26-18-507.

**Effective Dates.** Acts 1983, No. 372, § 21: July 1, 1983.

Acts 1983 (1st Ex. Sess.), No. 82, § 2: Nov. 8, 1983. Emergency clause provided: "It is hereby found and determined by the General Assembly that there is an urgent need to enable the Arkansas Student Loan Authority and the Student Loan Guarantee Foundation of Arkansas to expand their capability to collect outstanding loans owed to them by citizens of the State of Arkansas; that the collection of defaulted loans is essential to the viability of the Arkansas Student Loan Authority and the Student Loan Guarantee Foundation of Arkansas and to the continuation and extension of the programs of those agencies; and that the amendment of certain of the provisions of Act 372 of 1983 will serve to further and accomplish this purpose. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety, shall be in full force and effect from and after its passage and approval."

Acts 1991, No. 1154, § 5: July 1, 1991. Emergency clause provided: "It is hereby found and determined by the Seventy-Eighth General Assembly that the effectiveness of this act on July 1, 1991 is essential to the operation of the all agencies within state and that in the event of

an extension of the Regular Session, the delay in the effective date of this act beyond July 1, 1991 could work irreparable harm upon the proper administration and provision of essential government programs. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 1991."

Acts 2003, No. 826, § 4: July 1, 2003. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that unreimbursed expenses are being withdrawn from the State Employees Benefits Trust Fund of the State and Public School Employees Insurance Fund; that this act is needed to prevent confusion and uncertainty concerning these funds; and that this act is immediately necessary to recover costs to the State Employees Benefits Trust Fund of the State and Public School Employees Insurance Fund as required by law. Therefore, an emergency is declared to exist and this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2003."

Acts 2003, No. 1800, § 5: August 1, 2003.

Acts 2009, No. 713, § 3, provided: "This act is effective for tax years beginning on or after January 1, 2009."

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## 26-36-301. Purposes.

(a) The purpose of this subchapter is to establish as policy that all claimant agencies and the Revenue Division of the Department of Finance and Administration shall cooperate in identifying debtors who:

(1) Qualify for refunds from the division; and

(2) Owe money to the state, to an Arkansas county, city, or town, or to a housing authority created under § 14-169-101 et seq., through its various claimant agencies.

(b) It is also the intent of this subchapter that procedures be established for setting off against any such refund the sum of any debt owed to the state, to an Arkansas county, city, or town, or to a housing authority created under § 14-169-101 et seq.

**History.** Acts 1983, No. 372, § 1; A.S.A. 1947, § 84-4901; Acts 2003, No. 1023, § 1; 2003, No. 1800, § 1.

### RESEARCH REFERENCES

**U. Ark. Little Rock L. Rev.** Survey of funds for Debt Collections, 26 U. Ark. Legislation, 2003 Arkansas General Assembly, Taxation, Set Off Against Tax Re- Little Rock L. Rev. 497.

### 26-36-302. Construction.

This subchapter shall be liberally construed so as to effectuate its purposes as far as legally and practically possible.

**History.** Acts 1983, No. 372, § 1; A.S.A. 1947, § 84-4901.

### 26-36-303. Definitions.

As used in this subchapter:

(1)(A) "Claimant agency" means:

- (i) State-supported colleges, universities, and technical institutes;
- (ii) The Department of Human Services;
- (iii) The Arkansas Student Loan Authority;
- (iv) The Student Loan Guarantee Foundation of Arkansas;
- (v) The Auditor of State;
- (vi) The Department of Higher Education;
- (vii) The Office of Child Support Enforcement of the Revenue Division of the Department of Finance and Administration;
- (viii) Arkansas circuit, county, district, or city courts;
- (ix) Housing authorities created under § 14-169-101 et seq.;
- (x) The Employee Benefits Division of the Department of Finance and Administration;
- (xi) The Office of Personnel Management of the Department of Finance and Administration;
- (xii) County collectors and county treasurers;
- (xiii) The Department of Health; and
- (xiv) The Internal Revenue Service.

(B) An entity shall not be added as a claimant agency under this subdivision (1) after July 16, 2003, unless the entity has an annual outstanding debt of two hundred thousand dollars (\$200,000);



(2) "Debt" means:

(A) Any liquidated sum due and owing any claimant agency, which has accrued through contract, subrogation, tort, operation of law, legal proceeding, or any other legal theory, regardless of whether there is an outstanding judgment for that sum;

(B) Accrued obligations due to an assignment of child support rights made to the state as a condition of eligibility for welfare assistance and those which have accrued from contract with the claimant agency by an individual who is not the recipient of welfare assistance;

(C) Money owed to a claimant agency as a result of a debtor's cashing both the original and the duplicate state warrants;

(D) All of the following that have been delinquent for more than six (6) months and that are not under appeal:

(i) Traffic fines;

(ii) Any court-imposed fine or cost, including fines related to the prosecution of hot checks under the Arkansas Hot Check Law, § 5-37-301 et seq.; and

(iii) Restitution ordered by a circuit, county, district, or city court related to the violation of any state law;

(E) Money owed to a claimant agency for all costs as a result of the debtor's use of state medical and pharmacy benefits for which he or she is not entitled;

(F) Money owed to a claimant agency for all costs resulting from an overpayment of wages or salaries, including a lump sum payment; and

(G) Money owed to a claimant agency for all delinquent taxes, all costs resulting from delinquent taxes, and any penalties assessed against a delinquent taxpayer under § 26-36-201;

(3) "Debtor" means any individual owing money to or having a delinquent account with any claimant agency, which obligation has not been adjudicated, satisfied by court order, set aside by court order, or discharged in bankruptcy;

(4) "Division" means the Revenue Division of the Department of Finance and Administration;

(5) "Refund" means the Arkansas income tax refund that the division determines to be due any individual taxpayer less any amounts determined by the division to be due to the division for payment of any state tax as defined in the Arkansas Tax Procedure Act, § 26-18-101 et seq.; and

(6) "Setoff" means the withholding of part or all of income tax refunds due individuals who owe debts to the State of Arkansas, to a county, a city, or a town, or to a housing authority created under § 14-169-101 et seq.

**History.** Acts 1983, No. 372, § 2; 1983 1995, No. 1184, § 36; 1995, No. 1262, (1st Ex. Sess.), No. 82, § 1; 1985, No. 987, § 12; 1997, No. 1280, § 1; 2003, No. 826, §§ 1, 6; A.S.A. 1947, § 84-4902; Acts § 1; 2003, No. 1023, §§ 2, 3; 2003, No. 1989, No. 698, § 1; 1993, No. 345, § 1; 1800, §§ 2, 3; 2005, No. 277, § 1; 2007,



No. 553, § 1; 2011, No. 724, § 1; 2011, No. 815, § 1; 2011, No. 983, § 4.

**A.C.R.C. Notes.** Acts 2003, No. 1023 contained another Section 2 which amended § 26-36-316(b)(1).

**Amendments.** The 2011 amendment

by No. 724, in (2)(D), substituted “delinquent” for “due and payable” and “six (6) months” for “one (1) year.”

The 2011 amendment by identical acts Nos. 815 and 983 added (1)(A)(xiii).

## RESEARCH REFERENCES

**U. Ark. Little Rock L. Rev.** Survey of Legislation, 2003 Arkansas General Assembly, Taxation, Set Off Against Tax Re-

funds for Debt Collections, 26 U. Ark. Little Rock L. Rev. 497.

### 26-36-304. Remedy cumulative.

The collection remedy under this subchapter is in addition to and not in substitution for any other remedy available by law.

**History.** Acts 1983, No. 372, § 3; A.S.A. 1947, § 84-4903.

### 26-36-305. Setoffs for claimant agencies.

Subject to the limitations contained in this subchapter, the Revenue Division of the Department of Finance and Administration shall, upon request, render assistance in the collection of any delinquent account or debt owing to any claimant agency. This assistance shall be provided by setting off any refunds due the debtor from the division by the sum certified by the claimant agency as due and owing.

**History.** Acts 1983, No. 372, § 5; A.S.A. 1947, § 84-4905.

### 26-36-306. Minimum sum collectible.

A claimant agency shall not be allowed to effect final setoff and collect debts through use of the remedy established under this subchapter unless the debt is at least twenty dollars (\$20.00). However, the Revenue Division of the Department of Finance and Administration may set off any lesser sum, regardless of this provision, which the Director of the Department of Finance and Administration shall establish as economically justifiable.

**History.** Acts 1983, No. 372, § 4; 1985, No. 987, § 2; A.S.A. 1947, § 84-4904.

### 26-36-307. Submission of claims — Information.

(a) All claimant agencies shall submit, for collection under the procedure established by this subchapter, all debts which they are owed, except in cases where the agencies are advised by the Attorney General not to submit a claim because the validity of the debt is legitimately in dispute, because an alternative means of collection is

pending and believed to be adequate, or because such a collection attempt would result in a loss of federal funds.

(b) As a condition precedent to setoff, all claimant agencies shall obtain the full name and social security number and submit this information to the Revenue Division of the Department of Finance and Administration and, whenever possible, also obtain and submit the address and any other identifying information required by rules promulgated by the division pursuant to the authority of § 26-36-320 for any person for which the claimant agencies provide any service or transact any business and who the claimant agencies can foresee may become a debtor under the terms of this subchapter.

**History.** Acts 1983, No. 372, § 3; A.S.A. 1947, § 84-4903.

### **26-36-308. Procedure for setoff generally.**

(a)(1) A claimant agency seeking to attempt collection of a debt through setoff shall notify, in writing, the Revenue Division of the Department of Finance and Administration and supply the debtor's name, social security number, and any other information necessary to identify the debtor whose refund is sought to be set off.

(2) Notification to the division and the furnishing of identifying information must occur on or before December 1 in the year preceding the calendar year during which the refund would be paid. Additionally, subject to the notification deadline specified, the notification shall be effective only to initiate setoff for claims against refunds that would be made in the calendar year subsequent to the year in which notification is made to the division.

(b)(1) The division shall determine whether the debtor to the claimant agency is entitled to a refund.

(2) Upon determination by the division that a debtor specified by a claimant agency qualifies for such a refund and that a refund is pending, the division shall specify its sum and indicate the debtor's address as listed on the tax return.

(3) Each claimant agency must submit all claims for any year for collection under this subchapter to the division at one (1) time.

(4) Claims to be set off shall be submitted in a form compatible with the data processing equipment of the division, or the submitting claimant agency shall pay the actual cost of converting their list of claims to a form which can be used by the division for effecting setoff.

(c) Unless stayed by court order, the division shall, upon certification as provided in this subchapter, set off the certified debt against the refund to which the debtor would otherwise be entitled.

**History.** Acts 1983, No. 372, § 6; A.S.A. 1947, § 84-4906; Acts 1993, No. 403, § 22.

**26-36-309. Notification of debtor.**

(a) The claimant agency shall provide written notice to the debtor whose debt has been certified to the Revenue Division of the Department of Finance and Administration of its intention to intercept the debtor's tax refund.

(b)(1) The contents of the written notification to the debtor and the division's copy of the setoff claim shall clearly set forth:

(A) The basis for the claim to the refund;

(B) The intention to apply the refund against the debt to the claimant agency;

(C) The debtor's opportunity to give written notice of intent to contest the validity of the claim before the claimant agency within thirty (30) days of the date of the mailing of the notice;

(D) The mailing address to which the application for a hearing must be sent; and

(E) The fact that failure to apply for a hearing in writing within the thirty-day period will be deemed a waiver of the opportunity to contest the claim causing final setoff by default.

(2) The notification form shall be approved by the Director of the Department of Finance and Administration.

(c) The written application by the debtor for a hearing shall be effective upon mailing the application postage prepaid and properly addressed to the claimant agency.

**History.** Acts 1983, No. 372, § 7; 1985, No. 987, § 3; A.S.A. 1947, § 84-4907.

**26-36-310. Hearing procedure.**

(a) If a claimant agency receives written application of the debtor's intention to contest at hearing the claim upon which the intended setoff is based, it shall grant a hearing according to procedures established under the Arkansas Administrative Procedure Act, § 25-15-201 et seq. Additionally, it shall be determined at the hearing whether the claimed sum asserted as due and owing is correct, and if not, an adjustment to the claim shall be made.

(b) Pending final determination at hearing of the validity of the debt asserted by the claimant agency, no action shall be taken in furtherance of collection through the setoff procedure allowed under this subchapter.

(c) No issues may be considered at the hearing which have been previously litigated.

**History.** Acts 1983, No. 372, § 8; A.S.A. 1947, § 84-4908.



**26-36-311. Appeals.**

Appeals from action taken at hearing allowed under this subchapter shall be in accordance with the provisions of the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

**History.** Acts 1983, No. 372, § 9; A.S.A. 1947, § 84-4909.

**26-36-312. Certification of debt.**

(a) Upon final determination, through hearing provided for by this subchapter, of the debt due and owing the claimant agency or upon the debtor's default for failure to contest the claimant agency's right to setoff as provided for in this subchapter, mandating timely request for review of the asserted basis for setoff, the Revenue Division of the Department of Finance and Administration shall hold for setoff any refund as defined in this subchapter determined to be available to the individual debtor.

(b) Any changes to the original debt certified will be accepted only if the new amount is less than the debt originally certified. Such changes will be forwarded to the division in writing and in a format acceptable to the division. Debtors' names may be deleted from the debt certification listing upon written notice to the division by the claimant agency.

(c) Upon determination that a refund is available to a debtor who has previously been certified as owing a debt to the claimant agency, the division shall finalize the setoff by transferring the refund amount, up to the amount of the debt certified, to the claimant agency and by refunding any remaining balance to the debtor.

**History.** Acts 1983, No. 372, § 10; 1985, No. 987, § 4; A.S.A. 1947, § 84-4910.

**26-36-313. Notice of final setoff.**

Upon the finalization of setoff under the provisions of this subchapter, the Revenue Division of the Department of Finance and Administration shall notify the debtor in writing of the action taken along with an accounting of the action taken on any refund. If there is an outstanding balance after setoff, the notice under this section shall accompany the balance when disbursed.

**History.** Acts 1983, No. 372, § 11; A.S.A. 1947, § 84-4911.

**26-36-314. Priorities of claims.**

Priority in multiple claims to refunds allowed to be set off under the provisions of this subchapter shall be corresponding to the order in time which a claimant agency has filed a written notice with the Revenue



Division of the Department of Finance and Administration of its intention to effect collection through setoff under this subchapter.

**History.** Acts 1983, No. 372, § 12;  
A.S.A. 1947, § 84-4912.

### **26-36-315. Joint refunds.**

(a) When a taxpayer who is a debtor as defined in this subchapter has filed a joint return for which he or she is due a refund or has filed a separate return on the same form resulting in a joint refund, the entire amount of the refund shall be subject to setoff.

(b)(1) The Director of the Department of Finance and Administration shall notify each taxpayer due a joint refund of the amount and the date of a proposed setoff for a debt certified by a claimant agency to the Revenue Division of the Department of Finance and Administration.

(2) The notice under subdivision (b)(1) of this section shall be in writing and sent to the address listed on the taxpayer's most recently filed income tax return.

(c)(1)(A) A taxpayer who claims that he or she is not a debtor of a claimant agency may seek administrative relief by filing a written protest under oath within thirty (30) days after the notice under subdivision (b)(1) of this section is received.

(B) The written protest shall be signed by the nondebtor taxpayer or the nondebtor taxpayer's authorized agent and include the nondebtor taxpayer's reasons for opposing the proposed setoff.

(2) The nondebtor taxpayer may request the director to consider his or her request for relief upon written documents furnished by the nondebtor taxpayer or upon the written document and the evidence produced by the nondebtor taxpayer at a hearing conducted under the Arkansas Tax Procedure Act, § 26-18-101 et seq.

(3) The nondebtor taxpayer's protest shall include documentation supporting the proportionate share of the nondebtor taxpayer's payment of tax and the resulting amount of the joint refund that the nondebtor taxpayer claims is not subject to setoff.

(d) A nondebtor taxpayer who requests the director to render his or her decision based on written documents is not entitled by law to any other administrative hearing before the director's rendering of his or her decision.

(e) Administrative relief shall not be available to a nondebtor taxpayer who fails to protest a proposed setoff within the thirty (30) days after the notice under subdivision (b)(1) of this section is received.

(f)(1) If a taxpayer requests a hearing in person rather than on written documents, a hearing officer shall set the time and place for hearing on the written protest and shall give the nondebtor taxpayer reasonable notice of the hearing.

(2) At the hearing, the nondebtor taxpayer may be represented by an authorized representative and may present evidence in support of his or her position.

(3) After the hearing, the hearing officer shall render his or her decision in writing and shall serve copies upon both the nondebtor taxpayer and the claimant agency.

(g) The hearings on written protests and determinations made by the hearing officer are not subject to the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

(h)(1) After the issuance and service on the taxpayer of a decision of the hearing officer to sustain the setoff of the joint refund, a nondebtor taxpayer may seek judicial relief from the decision by filing suit within thirty (30) days after the date of the final determination of the hearing officer.

(2) Jurisdiction for a suit to contest a determination of the hearing officer under this section shall be in the Pulaski County Circuit Court or the circuit court of the county where the nondebtor taxpayer resides, and the matter shall be tried de novo.

(i) This section is the sole means by which a nondebtor taxpayer may challenge a proposed setoff for the benefit of a claimant agency.

**History.** Acts 1983, No. 372, § 17; A.S.A. 1947, § 84-4917; Acts 2009, No. 713, § 1. inserted (b) through (i) and redesignated the remaining text accordingly; and in (a), inserted “or she” and deleted the last sentence.

**Amendments.** The 2009 amendment

## 26-36-316. Disposition of proceeds collected.

(a) Upon effecting final setoff, the Revenue Division of the Department of Finance and Administration shall periodically write checks to the respective claimant agencies for the net proceeds collected on their behalf.

(b)(1)(A) For purposes of this subchapter, except as provided under subdivision (b)(1)(B) of this section, five percent (5%) of the proceeds collected by the division through setoff shall represent the division’s cost of effecting setoff, and these costs shall be charged to the respective claimant agency as a collection assistance fee.

(B) If the claimant agency is a circuit court, county court, district court, or city court, or a housing authority created under § 14-169-101 et seq., ten percent (10%) of the proceeds collected by the division through setoff shall represent the division’s cost of effecting setoff and shall be charged to the respective circuit court, county court, district court, or city court, or housing authority as a collection assistance fee.

(2) The collection assistance fees paid to the division shall be deposited into the State Treasury for credit to the Constitutional Officers Fund and the State Central Services Fund.

**History.** Acts 1983, No. 372, § 13; 1985, No. 987, § 5; A.S.A. 1947, § 84-4913; Acts 1991, No. 1154, § 1; 2003, No. 1023, § 2[4]; 2003, No. 1800, § 4. contained another Section 2 which amended § 26-36-303(1).

**A.C.R.C. Notes.** Acts 2003, No. 1023 **Cross References.** Constitutional Officers Fund and State Central Services Fund, § 19-5-205.

**RESEARCH REFERENCES**

**U. Ark. Little Rock L. Rev.** Survey of funds for Debt Collections, 26 U. Ark. Legislation, 2003 Arkansas General Assembly, Taxation, Set Off Against Tax Re- Little Rock L. Rev. 497.

**26-36-317. Accounting of payments.**

(a)(1) Simultaneously with the transmittal of a check for net proceeds collected to a claimant agency, the Revenue Division of the Department of Finance and Administration shall provide the claimant agency with an accounting of the setoffs finalized for which payment is being made.

(2) The accounting shall, whenever possible, include:

- (A) The full names of the debtors;
- (B) The debtors' social security numbers;
- (C) The gross proceeds collected per individual setoff;
- (D) The net proceeds collected per setoff; and
- (E) The collection assistance fee charged per setoff.

(b) Upon receipt by a claimant agency of a check representing net proceeds collected on a claimant agency's behalf by the division and an accounting of the proceeds as specified under this section, the claimant agency shall credit the debtor's obligation with the gross proceeds collected.

**History.** Acts 1983, No. 372, § 14;  
A.S.A. 1947, § 84-4914.

**26-36-318. Interest.**

Regardless of any other provision of law, no interest shall be paid any debtor on account of any amount set off under the provisions of this subchapter. Where a debtor receives a partial refund after setoff under this subchapter, he or she shall be entitled to interest only on that portion of the refund which he or she actually receives and only where such interest is otherwise provided by law.

**History.** Acts 1983, No. 372, § 18;  
A.S.A. 1947, § 84-4918.

**26-36-319. Disclosure of information.**

(a) Notwithstanding § 26-18-303 or any other provisions of law prohibiting disclosure by the Revenue Division of the Department of Finance and Administration of the contents of taxpayer records or information and notwithstanding any confidentiality statute of any claimant agency, all information exchanged among the division, claimant agency, and the debtor which is necessary to accomplish and effectuate the intent of this subchapter is lawful.

(b) The information obtained by a claimant agency from the division in accordance with the exemption allowed by subsection (a) of this



section shall only be used by a claimant agency in the pursuit of its debt collection duties and practices, and any person employed by or formerly employed by a claimant agency who discloses any such information for any other purpose, except as otherwise allowed by § 26-18-303, shall be penalized in accordance with the terms of that statute.

**History.** Acts 1983, No. 372, § 15;  
A.S.A. 1947, § 84-4915.

### **26-36-320. Rules and regulations.**

The Director of the Department of Finance and Administration is authorized to prescribe forms and make all rules which he or she deems necessary in order to effectuate the intent of this subchapter.

**History.** Acts 1983, No. 372, § 16;  
A.S.A. 1947, § 84-4916.

### **26-36-321. Setoff for debt to Internal Revenue Service.**

(a) The Director of the Department of Finance and Administration may enter into an agreement with the Internal Revenue Service to setoff state income tax refunds to satisfy a past-due and legally enforceable debt to the Internal Revenue Service.

(b) This subchapter shall apply to the setoff authorized by this section, except to the extent that any provision conflicts with this section.

(c) In addition to the applicable requirements and procedures under this subchapter, a setoff is not allowed for debts to the Internal Revenue Service unless the Internal Revenue Service complies with all notice and procedural requirements under federal law concerning the levy of a state tax refund.

(d) The setoff and payment to the Internal Revenue Service of an income tax refund due to a taxpayer in this section shall be made from a refund amount due to the taxpayer after the setoff of the taxpayer's refund to claimant agencies other than the Internal Revenue Service.

**History.** Acts 2009, No. 713, § 2; 2011, No. 983, § 5. deleted former (a) and redesignated the remaining subsections accordingly.

**Amendments.** The 2011 amendment

## **CHAPTER 37**

## **SALE OR FORFEITURE OF REAL PROPERTY**

### **SUBCHAPTER.**

- 1. GENERAL PROVISIONS.**
- 2. SALE OF TAX-DELINQUENT LANDS.**
- 3. REDEMPTION OF REALTY TO BE SOLD FOR TAXES.**



## SUBCHAPTER 1 — GENERAL PROVISIONS

## SECTION.

- 26-37-101. Transfer of tax-delinquent lands.  
 26-37-102. Publication of notice — Fee.  
 26-37-103. Verification by county assessor.  
 26-37-104. Costs of notices.

## SECTION.

- 26-37-105. Collection fee.  
 26-37-106. Recording of delinquent list.  
 26-37-107. Publication of delinquent list.  
 26-37-108. [Repealed.]  
 26-37-109. Redemption of tax-delinquent lands not transferred.

**Publisher's Notes.** Acts 1999, No. 42, § 1, provided: "Disposition of Unclaimed Redemption Money. All funds derived in prior years for the redemption of land pursuant to § 139 of Act 114 of 1883 as amended, formerly compiled as Arkansas Statute 84-1205, shall be transferred, by county court order, to the county general fund."

**Effective Dates.** Acts 1883, No. 114, § 226: effective on passage.

Acts 1887, No. 92, § 58: effective on passage.

Acts 1967, No. 467, § 9: July 1, 1967. Emergency clause provided: "It is hereby found and determined that the General Assembly has, by a vote of two-thirds of the members elected to both houses, voted to extend the regular session of the 66th General Assembly, as authorized in the Constitution; that under the provisions of Amendment 7 to the Constitution, enactments of the General Assembly that do not have an emergency clause do not become effective until 90 days after the date of final adjournment of the General Assembly; that the extended session of the General Assembly may not adjourn in time for this Act to take effect prior to July 1, 1967, thereby depriving the agency for which funds are appropriated herein of necessary operating funds to commence the next fiscal biennium; and, in order that the appropriation made herein may be available on July 1, 1967, the General Assembly determines that the immediate passage of this Act is necessary. Therefore, an emergency is hereby declared to exist and this Act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after the date of its passage and approval, provided that the appropriation authorized herein shall not be available until July 1, 1967."

Acts 1993, No. 791, § 10: Mar. 30, 1993. Emergency clause provided: "It is hereby found and determined by the General Assembly that the laws relating to the collection, redemption and sale of tax delinquent real property are in need of clarification; that Arkansas Courts have repeatedly voided tax deeds in instances where the county has not strictly complied with statutes; that such holdings have placed a cloud on tax deeds issued by the Commissioner of State Lands; that the present method whereby the Commissioner of State Lands disposes of tax delinquent land meets due process requirements; consequently, when the Commissioner of State Lands complies with the statutes set forth for his office to follow, tax deeds issued should not be void or voidable due to defects in the county procedure, except in cases where taxes have actually been paid. Further, the present situation has a chilling effect on the collection of taxes and encourages the nonpayment of taxes. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1995, No. 714, § 7: Mar. 21, 1995. Emergency clause provided: "It is hereby found and determined by the General Assembly of the State of Arkansas that the laws relating to the forfeiture, sale and redemption of tax delinquent lands are in need of clarification and that this act would clarify certain problems that have arisen. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force from and after its passage and approval."

## RESEARCH REFERENCES

**ALR.** Application of requirement that newspaper be locally published for official notice publication, 85 A.L.R.4th 581.

**Am. Jur.** 72 Am. Jur. 2d, State Tax., § 904 et seq.

**Ark. L. Rev.** Due Process: The Constitutional Requirements of Notice in Tax Sale Proceedings, 30 Ark. L. Rev. 73.

Note, Mennonite Board of Missions v. Adams: 11 Years After Fuentes v. Shevin,

the Supreme Court Has Found That Creditors Also Have Notice Rights, 37 Ark. L. Rev. 971.

**C.J.S.** 85 C.J.S., Tax., § 744 et seq.

**U. Ark. Little Rock L.J.** Notes, Property — Notice to Mortgagees in Tax Sales, 7 U. Ark. Little Rock L.J. 437.

Survey — Property, 10 U. Ark. Little Rock L.J. 605.

## 26-37-101. Transfer of tax-delinquent lands.

(a)(1) All lands upon which the taxes have not been paid for one (1) year following the date the taxes were due, October 15, shall be forfeited to the state and transmitted by certification to the Commissioner of State Lands for collection or sale.

(2) Tax-delinquent lands shall not be sold at the county level.

(b) The county collector shall hold all tax-delinquent lands in the county for one (1) year after the date of delinquency, and, if the lands are not redeemed by the certification date, which shall be no later than July 1 of the following year, the county collector shall transmit it to the state by certification, after notice as provided in this chapter, indicating all taxes, penalties, interest, and costs due and the name and last known address of the owner of record of the tax-delinquent lands.

(c) Upon receipt of the certification, title to the tax-delinquent lands shall vest in the State of Arkansas in care of the Commissioner of State Lands.

**History.** Acts 1983, No. 626, § 1; A.S.A. 1947, § 84-1126; Acts 1987, No. 814, § 5; 1993, No. 791, § 2; 1995, No. 660, § 1; 2011, No. 175, § 13.

**A.C.R.C. Notes.** Acts 1983, No. 626, § 2, as amended by Acts 1987, No. 814, § 5, provided that on December 31, 1985, the delinquent real property tax records of the county clerks should be transferred to the collectors, unless the clerks and collectors, by agreement, transferred such duties and responsibilities prior to that date, and that it would be the responsibility of the clerks to maintain said tax records until their duties and responsibilities are transferred to their respective collectors.

Acts 1989, No. 869, § 2, provided: "All mobile homes and manufactured homes on the books of the Commissioner of State Lands on March 22, 1989 shall be certified back to the county which certified them to

the Commissioner and shall not be sold by him."

Acts 1983, No. 626, § 7, as amended by Acts 1985, No. 179, § 5, Acts 1987, No. 814, § 6, Acts 1991, No. 1080, § 1, and Acts 1993, No. 791, § 3, provided: "(a) except as provided in subsection (b) of this section [Acts 1987, No. 814, § 6(b)], all tax delinquent land then held by the Commissioner of State Lands should be disposed of according to the provisions of Act 626 of 1983, as amended. For the purposes of Act 626 of 1983, as amended, the word 'taxes' should mean ad valorem taxes on real estate and the annual installments of the assessments of benefits levied by municipal improvement districts formed in second class cities under Act 84 of 1881, as amended, § 14-88-101 et seq., or Act 64 of 1929, as amended, § 14-88-203 et seq., for the sole purpose of acquiring, construct-

ing, operating, or maintaining a recreational facility. The term 'tax delinquent land' when used in Act 626 of 1983, as amended, should mean all land upon which the ad valorem property taxes have not been paid and the term should also include land subject to a lien for nonpayment of annual installments of the assessments of benefits levied by municipal recreation improvement districts created pursuant to § 14-88-101 et seq., or § 14-88-203 et seq.

"(b) All tax delinquent land which has been or will be forfeited to the State and conveyed to the Commissioner of State Lands by certification but which remains neither sold nor redeemed two (2) years from the date of the applicable public auction conducted in accordance with the provisions of Act 626 of 1983, as amended,

may not be subject to the provisions of Act 626 of 1983, as amended, or any other Act relating to the sale of land by the Commissioner, but may be sold by the Commissioner at public sales or by negotiation for whatever price the Commissioner determines to be in the best interest of the State and its local taxing units.

"(c) The Commissioner of State Lands shall have the authority to promulgate such rules and regulations as may be necessary to effectively carry out the provisions of Act 626 of 1983, as amended, [and,] upon adoption, such rules and regulations shall have the full force and effect of law."

**Amendments.** The 2011 amendment, in (a)(1), substituted "October 15" for "October 10" and "state" for "State of Arkansas."

## CASE NOTES

### ANALYSIS

In General.

Notice of Sale.

Promulgation of Rules and Regulations.

### In General.

Summary judgment was properly awarded to a corporation in an action by guardians to redeem property that had been sold for delinquent taxes; at the time of the brother's death he no longer held title as it had vested to the State pursuant to subsection (c) of this section, however, his incapacitated sisters did inherit his right of redemption. *Givens v. Haybar, Inc.*, 95 Ark. App. 164, 234 S.W.3d 896 (2006).

### Notice of Sale.

Title to property sold at a tax sale was properly quieted in the purchaser where the evidence showed that the state land commissioner sent notice of the deficiency and sale to the former owner at the address certified by the county. *Mays v. St. Pat Props., LLC*, 357 Ark. 482, 182 S.W.3d 84 (2004), cert. denied, 543 U.S. 943, 125 S. Ct. 353, 160 L. Ed. 2d 255 (2004).

Buyer's tax deed was properly voided

because the Commissioner of State Lands failed to notify the bank as an interested party since it held a recorded interest in the property at the time of certification, and the right to challenge the tax sale based on the failure to give notice to the bank passed to the mortgagor when it acquired an interest in the property through the foreclosure sale. *RWR Props. v. Mid-State Trust VIII*, 102 Ark. App. 115, 282 S.W.3d 297 (2008), review denied, *RWR Props. v. Mid-State Trust VIII*, — Ark. —, — S.W.3d —, 2008 Ark. LEXIS 582 (Sept. 4, 2008).

### Promulgation of Rules and Regulations.

The Commissioner of State Lands has authority to promulgate rules and regulations concerning tax-forfeiture sales, notwithstanding that the provision granting such authority, which is referenced in subsection (c) of the notes to the statute, is not codified. *Carter v. Green*, 67 Ark. App. 367, 1 S.W.3d 449 (1999).

**Cited:** *Worth v. City of Rogers*, 341 Ark. 12, 14 S.W.3d 471 (2000); *Rylwell, L.L.C. v. Ark. Dev. Fin. Auth.*, 372 Ark. 32, 269 S.W.3d 797 (2007).



**26-37-102. Publication of notice — Fee.**

(a) The county collector in each county shall, not less than thirty (30) days nor more than forty (40) days prior to the certification of the land, cause to be published in a newspaper of general circulation in the county:

- (1) A list of real property not previously redeemed;
- (2) The names of the owners of record;
- (3) The amount of the taxes, penalties, interest, and cost necessary to be paid to redeem the property;
- (4) The date upon which such period of redemption expires; and
- (5) Notice that unless the property is redeemed prior to the expiration of the period of redemption, the lands will be forfeited to the state.

(b) Fees for the publication shall be the same as set forth in § 26-37-108 [repealed].

**History.** Acts 1983, No. 626, § 1; A.S.A. referred to in subsection (b), was repealed 1947, § 84-1126; Acts 1987, No. 814, § 5. by Acts 1993, No. 985, § 2. For present

**Publisher's Notes.** Section 26-37-108, law, see § 26-37-107.

**26-37-103. Verification by county assessor.**

(a) Prior to certification to the Commissioner of State Lands, the county assessor shall:

- (1) Verify the assessment to establish value on all parcels to be certified;
- (2) Verify the name and last known address of the owner of record of the tax-delinquent land; and
- (3) Determine whether the tax-delinquent land exists.

(b) If the land is found to be nonexistent, the county assessor shall remove the delinquent entry from the assessment rolls.

(c) No tax-delinquent lands shall be certified to the Commissioner of State Lands without the county assessor's verification.

**History.** Acts 1983, No. 626, § 1; A.S.A. 1947, § 84-1126; Acts 1987, No. 814, § 5.

**26-37-104. Costs of notices.**

(a) All costs of notice shall be added to the costs to be collected from the purchaser or redeemer.

(b) Costs of notice shall include, but not be limited to, certified mail costs, newspaper and catalog costs, and title work.

**History.** Acts 1983, No. 626, § 1; A.S.A. 1947, § 84-1126; Acts 1987, No. 814, § 5; 2005, No. 1231, § 1.



### 26-37-105. Collection fee.

The Commissioner of State Lands shall charge a twenty-five dollar (\$25.00) collection fee for each deed issued by the Commissioner of State Lands, whether the land is redeemed or sold.

**History.** Acts 1983, No. 626, § 1; A.S.A. 1947, § 84-1126; Acts 1987, No. 814, § 5; 1995, No. 714, § 1.

### 26-37-106. Recording of delinquent list.

(a)(1) The county collectors of this state shall cause a list of the delinquent lands in their respective counties, as corrected by the county collectors, to be entered in a permanent record appropriately labeled.

(2) The list shall be a permanent public record and open to the inspection of the public at all times.

(b) The county officer designated by the quorum court under § 26-28-102 shall certify that the total amount of tax-delinquent lands in the permanent record under subsection (a) of this section is equal to the credit allowed the county collector for tax-delinquent lands on the current tax settlement.

(c) The record, so certified, shall be evidence of the facts contained in the list and certificate.

**History.** Acts 1883, No. 114, § 128, p. 199; 1887, No. 92, §§ 46, 47, p. 143; C. & M. Dig., §§ 10084, 10085; Acts 1933, No. 250, §§ 5, 6; 1933 (1st Ex. Sess.), No. 16, § 5; Pope's Dig., §§ 13846-13848; A.S.A. 1947, § 84-1102; Acts 1987, No. 814, § 1; 1993, No. 403, § 23; 2005, No. 1231, § 2; 2011, No. 617, § 2.

**Amendments.** The 2011 amendment, in (b), substituted "county officer designated by the quorum court under § 26-28-102" for "county clerk," "delinquent" for "tax-delinquent" twice, and "the permanent record under subsection (a) of this section" for "this permanent record."

## CASE NOTES

### ANALYSIS

Constitutionality.

In General.

Book of Delinquent Lands.

Certification of Collector.

### Constitutionality.

The 1933 amendment (No. 250) to this section was not in violation of Ark. Const., Art. 5, § 21. *Matthews v. Byrd*, 187 Ark. 458, 60 S.W.2d 909 (1933).

The 1933 amendment (No. 250) to this section was not unconstitutional as taking property without due process of law. *Benham v. Davis*, 196 Ark. 740, 119 S.W.2d 743 (1938).

### In General.

For decisions under prior law (*Overdue Tax Act of 1881*), see *Gallagher v. Johnson*, 65 Ark. 90, 44 S.W. 1041 (1898); *Wallace v. Hill*, 135 Ark. 353, 205 S.W. 699 (1918).

For decisions construing this section prior to 1933 amendment, see *Martin v. Allard*, 55 Ark. 218, 17 S.W. 878 (1891); *Cooper v. Freeman Lumber Co.*, 61 Ark. 36, 31 S.W. 981 (1895); *Taylor v. State*, 65 Ark. 595, 47 S.W. 1055 (1898); *Logan v. Eastern Ark. Land Co.*, 68 Ark. 248, 57 S.W. 798 (1900); *Hunt v. Gardner*, 74 Ark. 583, 86 S.W. 426 (1905); *Birch v. Walworth*, 79 Ark. 580, 96 S.W. 140 (1906); *Cook v. Ziff Colored Masonic Lodge*, 80 Ark. 31, 96 S.W. 618 (1906); *Brasch v.*

Western Tie & Timber Co., 80 Ark. 425, 97 S.W. 445 (1906); *Magness v. Harris*, 80 Ark. 583, 98 S.W. 362 (1906); *Earle Imp. Co. v. Chatfield*, 81 Ark. 296, 99 S.W. 84 (1907); *Osceola Land Co. v. Chicago Mill & Lumber Co.*, 84 Ark. 1, 103 S.W. 609 (1907); *Townsend v. Penrose*, 84 Ark. 316, 105 S.W. 588 (1907); *Frank Kendall Lumber Co. v. Smith*, 87 Ark. 360, 112 S.W. 888 (1908); *Leigh v. Trippe*, 91 Ark. 117, 120 S.W. 972 (1909); *Hewett v. Ozark White Lime Co.*, 120 Ark. 528, 180 S.W. 199 (1915); *Earl v. Harris*, 121 Ark. 621, 182 S.W. 273 (1915); *Hurst v. Munson*, 152 Ark. 313, 238 S.W. 42 (1922); *Bingham v. Powell*, 152 Ark. 484, 238 S.W. 597, 21 A.L.R. 1214 (1922); *Tedford v. Emison*, 182 Ark. 1054, 34 S.W.2d 214 (1931); *Hampton v. Dodd*, 184 Ark. 287, 42 S.W.2d 224 (1931); *Alphin v. Banks*, 193 Ark. 563, 102 S.W.2d 558 (1937); *Burbridge v. Crawford*, 195 Ark. 191, 112 S.W.2d 423 (1937); *McMillen v. East Ark. Inv. Co.*, 196 Ark. 367, 117 S.W.2d 724 (1938); *Hirsch v. Dabbs*, 197 Ark. 756, 126 S.W.2d 116 (1939).

Since the 1933 amendment, which eliminated a sentence which provided that the county clerk should keep posted up in or about his office the delinquent list for one year, noncompliance with that requirement does not operate to invalidate tax sale on that account. *Hirsch v. Dabbs*, 197 Ark. 756, 126 S.W.2d 116 (1939).

Delinquent list must be recorded prior to the sale, but this section does not require that published notice of sale also be recorded; rather, after publication has been made, there shall be appended, at the foot of the record of lands returned delinquent by the collector, a certificate showing in what newspaper the notice was published and the dates of publication. *Anthony v. Western & S. Life Ins. Co.*, 198 Ark. 445, 128 S.W.2d 1014 (1939).

Where lands were so sold during time that Acts 1935, No. 142 was in force, these sales would be made valid by the curative effects of this law. *Coulter v. Anthony*, 228 Ark. 192, 308 S.W.2d 445 (Ark. 1957).

### **Book of Delinquent Lands.**

The 1933 amendments showed no intention to dispense with the requirement that a permanent record be made and kept of lands returned delinquent, nor as to the time of making such record, that is, prior to sale. *Hirsch v. Dabbs*, 197 Ark. 756, 126 S.W.2d 116 (1939).

The filing of lists of delinquent lands on sheets of paper pinned at one corner, which lists were never corrected or recorded in a book, did not meet the requirements necessary to constitute notice to property owners. *Smith v. Treadwell*, 211 Ark. 247, 200 S.W.2d 514 (1947).

### **Certification of Collector.**

Clerk's (now collector's) certificate held in compliance with this section. *Benham v. Davis*, 196 Ark. 740, 119 S.W.2d 743 (1938).

County clerk's (now collector's) certificate of publication does not have to recite that the newspaper is qualified by law. *Anthony v. Western & S. Life Ins. Co.*, 198 Ark. 445, 128 S.W.2d 1014 (1939).

Acts 1935, No. 282, in amending Acts 1933 (Ex. Sess.), No. 16 and omitting such provisions, did not repeal the requirement that the county clerk (now collector) attach a certificate to the delinquent list of lands as recorded by him, showing in what newspaper the delinquent list was published, and the dates of publication. *Cecil v. Tisher*, 206 Ark. 962, 178 S.W.2d 655 (1944).

Tax sales void when certificate not executed prior to date of sale. *Standard Sec. Co. v. Republic Mining & Mfg. Co.*, 207 Ark. 335, 180 S.W.2d 575 (1944); *Hensley v. Phillips*, 215 Ark. 543, 221 S.W.2d 412 (1949); *Coulter v. Anthony*, 228 Ark. 192, 308 S.W.2d 445 (Ark. 1957). But see *Union Bank & Trust Co. v. Horne*, 195 Ark. 481, 113 S.W.2d 1091 (1938).

Tax sales of forfeited lands void when certificate not filed. *Cecil v. Tisher*, 206 Ark. 962, 178 S.W.2d 655 (1944); *Standard Sec. Co. v. Republic Mining & Mfg. Co.*, 207 Ark. 335, 180 S.W.2d 575 (1944); *Harrison v. Mobley*, 211 Ark. 772, 202 S.W.2d 756 (1947); *Browning v. King*, 214 Ark. 480, 216 S.W.2d 803 (1949); *Boyd v. Meador*, 10 Ark. App. 5, 660 S.W.2d 943 (1983).

Failure of clerk (now collector) to certify was irregularity that could be cured by confirmation proceedings under former § 26-38-108 (repealed). *Bowles v. Dierks Lumber & Coal Co.*, 217 Ark. 892, 233 S.W.2d 632 (1950); *Jenkins v. Incorporated Town of Caraway*, 219 Ark. 236, 242 S.W.2d 348 (1951) (decisions under prior law).

This section requires the certificate of the clerk (now collector) to be made prior

to the sale, and where it is made on the date of the sale, the sale is void. Broadhead v. McEntire, 19 Ark. App. 259, 720 S.W.2d 313 (1986). **Cited:** Smith v. Cole, 187 Ark. 471, 61 S.W.2d 55 (1933).

**26-37-107. Publication of delinquent list.**

(a)(1)(A) The county collectors of this state shall cause the list of the delinquent lands in their respective counties to be prepared and a copy of the list to be delivered to a legal newspaper of the county by no later than December 1 of each year.

(B)(i) Within seven (7) days thereafter, the newspaper shall publish the list.

(ii) The newspaper shall publish the list in at least seven-point type.

(C) If the newspaper regularly publishes a total market coverage edition or supplement publication that has wider circulation within the county or district, the newspaper may publish the list in that edition or publication.

(2) If there is no newspaper in the county or district, the publication shall be in the nearest newspaper having a general circulation in the county or district for which the list is being published.

(3) The list of delinquent lands shall contain at least the name of the owner and the legal description of the property as was recorded on the tax book.

(b) The publication shall be in substance as follows:

**“DELINQUENT REAL ESTATE TAX LIST**

The Real Estate Tax Books of ..... County reflect the following list of real property to be delinquent for nonpayment of taxes for the year ..... (The amount included in the “Tax, Penalty and Cost” column may not include all penalties and costs and will not include interest and special improvement assessments that may be due at the time of payment.)

**NAME OF OWNER    LEGAL DESCRIPTION    BASE    DELINQUENCY**

Brown, Bill	pt. W ½ NE SW Sect 6 Twp 17 Rn 5 5 Acs	\$44.25	
Doe, John	Lot 3 Blk 5 Plainview Add.	\$31.25	
Jones, John	W ½ Lot 8 Blk 54 Meriweather Trust	\$42.24	
Roe, Richard	SW ¼ SE ¼ Sec 12 Twp 18E Rn 6E 40 Acs	\$37.25	

NOTICE IS HEREBY GIVEN THAT said several tracts, lots or parts of lots, will be held as delinquent for a one-year period from this date and then certified to the State of Arkansas, Commissioner of State Lands, for collection or to be sold, unless the delinquent taxes, penalties, and costs are paid before the end of the one-year period.



(Date of Notice) ..... Collector ..... County.”

(c)(1) The legal fee for each required publication of delinquent real property tax lists shall be one dollar and fifty cents (\$1.50) per tract per insertion.

(2) The fee shall be added as costs of forfeiture and shall be paid by the county collector from any moneys in the county collector’s possession derived from the payment of real property taxes.

(3) The receipts for the payment, verified by the certificate of the county clerk as to its correctness, shall entitle the county collector to a credit for the amount so paid.

**History.** Acts 1955, No. 80, §§ 1, 2; 1967, No. 467, § 1; 1975, No. 574, § 6; 1981, No. 305, § 1; 1985, No. 953, § 2; A.S.A. 1947, § 84-1103; Acts 1987, No. 814, § 2; 1991, No. 1045, § 2; 1993, No. 985, § 1; 1995, No. 660, § 2; 2001, No. 985, § 1.

RESEARCH REFERENCES

**U. Ark. Little Rock L. Rev.** Note, Constitutional & Property Law — Fourteenth Amendment Due Process Clause & Notice to Be Heard — It Felt So Right But Was All So Wrong: United States Supreme Court Rules Arkansas’s Tax-Foreclosure

Notice Procedure Fails to Satisfy Due Process Clause When Certified Mail Notice Returns “Unclaimed” (Jones v. Flowers, 547 U.S. 220, 126 S. Ct. 1708, 164 L. Ed. 2d 415, 2006 U.S. LEXIS 3451 (2006)), 30 U. Ark. Little Rock L. Rev. 179.

CASE NOTES

ANALYSIS

Constitutionality.  
In General.  
Listing.  
Notice.  
Publication.  
Publication Fee.

**Constitutionality.**

Act of March 14, 1879, which provided for taking of land for taxes without notice by publication and a competitive sale either of the smallest quantity for the taxes or the best price for a whole tract, with provisions to save the excess to the purchaser, was unconstitutional. Bagley v. Castile, 42 Ark. 77 (1883) (decision under prior law).

Confirmation of tax sale cures irregularity of failure to give required notice of sale. Berry v. Davidson, 199 Ark. 276, 133 S.W.2d 442 (1939) (decision under prior law).

**In General.**

Acts 1933, No. 250 and 1933 (Ex. Sess.), No. 16 dispensed with the necessity of

filing a list of lands; however, the omission from 1935, No. 282 of provision contained in Acts 1933 (Ex. Sess.), No. 16, limiting newspaper space for publication of delinquent tax list to six inches, double column, was evidence of legislative intention not to reenact the old law notwithstanding the word “notice” was used in Acts 1935, No. 282, since reference to publication of “the list as herein described” in former statute could only mean the delinquent list; therefore, it was proper to publish the delinquent list. Thomas v. Branch, 202 Ark. 338, 150 S.W.2d 738 (1941) (decision under prior law).

Where land involved was sold under description of lots 2-3, it fairly placed landowner of lot 3 on notice that his property had been sold for taxes even though lot 2 did not belong to landowner. Brown v. Masterson, 240 Ark. 880, 402 S.W.2d 666 (1966).

**Listing.**

Descriptions held sufficient. Evans v. F.L. Dumas Store, Inc., 192 Ark. 571, 93 S.W.2d 307 (1936); Northwest Land Co. v.



Sugg, 227 Ark. 410, 299 S.W.2d 63 (1957) (decisions under prior law).

Acts 1935, No. 170, § 2, required contiguous city lots to be entered as one tract. *Moses v. Gingles*, 208 Ark. 788, 187 S.W.2d 892 (1945); *Northwest Land Co. v. Sugg*, 227 Ark. 410, 299 S.W.2d 63 (1957) (decisions under prior law).

Lots not listed as one tract. *Pinkert v. Spoon*, 210 Ark. 1025, 198 S.W.2d 838 (1947); *Seligson v. Seegar*, 211 Ark. 871, 202 S.W.2d 970 (1947) (decisions under prior law).

### Notice.

Former statute held not to prevent a meritorious defense on ground that no notice was given. *Townsend v. Martin*, 55 Ark. 192, 17 S.W. 875 (1891) (decision under prior law).

Tax title based upon sale without legal notice is void. *Woolfork v. Buckner*, 60 Ark. 163, 29 S.W. 372 (1895) (decision under prior law).

### Publication.

Acts 1869, § 14, required publication to be for at least three weeks. *Pennell & Leverett v. Monroe*, 30 Ark. 661 (1875) (decision under prior law).

Mere informalities or unimportant variances in publication held not to invalidate tax sales. *Thweatt v. Black*, 30 Ark. 732 (1875); *Evans v. F.L. Dumas Store, Inc.*, 192 Ark. 571, 93 S.W.2d 307 (1936) (decisions under prior law).

Publication required to be in newspaper printed in district. *Wolf & Bailey v. Phillips*, 107 Ark. 374, 155 S.W. 924 (1913) (decision under prior law).

Provisions requiring lists to be published for two weeks before tax sales. *Townsend v. Martin*, 55 Ark. 192, 17 S.W. 875 (1891); *Martin v. McDiarmid*, 55 Ark. 213, 17 S.W. 877 (1891); *Thweatt v. Howard*, 68 Ark. 426, 59 S.W. 764 (1900); *Byrne v. Less*, 92 Ark. 211, 122 S.W. 635 (1909); *Walter v. Swaim*, 107 Ark. 242, 154 S.W. 511 (1913); *Laughlin v. Fisher*, 141 Ark. 629, 218 S.W. 199 (1920); *McWilliams v. Clampitt*, 195 Ark. 908, 115 S.W.2d 280 (1938); *Schuman v. Metropolitan Trust Co.*, 199 Ark. 283, 134 S.W.2d 579 (1939); *Edwards v. Nall*, 200 Ark. 9, 137 S.W.2d 748 (1940); *Reynolds v. McHenry*, 200 Ark. 130, 140 S.W.2d 106 (1940); *Bolin v. Kelley*, 205 Ark. 538, 205 Ark. 539, 169 S.W.2d 865 (1943); *Brown v. Wall*, 206 Ark. 576, 176 S.W.2d 707 (1944).

Failure to publish list of delinquent lands as required voids tax sales. *Bennett v. Younes*, 189 Ark. 961, 76 S.W.2d 59 (1934); *Nunn v. Mitchell*, 210 Ark. 422, 196 S.W.2d 576 (1946) (decisions under prior law); *Booth v. Peoples Loan & Inv. Co.*, 248 Ark. 1213, 455 S.W.2d 868 (1970).

Publication need not be exact reproduction of delinquent list on file. *Evans v. F.L. Dumas Store, Inc.*, 192 Ark. 571, 93 S.W.2d 307 (1936) (decision under prior law).

Failure to comply strictly with requirement of publication held a mere irregularity cured by confirmation. *Giller v. Fouke*, 193 Ark. 644, 101 S.W.2d 783 (1937) (decision under prior law).

Publication required for two weeks in same paper. *Edwards v. Lodge*, 195 Ark. 470, 113 S.W.2d 94 (1938); *Anthony v. Western & S. Life Ins. Co.*, 198 Ark. 445, 128 S.W.2d 1014 (1939) (decisions under prior law).

Publication one week in one paper and following week in different paper was not mere irregularity that could be cured by a curative act. *Edwards v. Lodge*, 195 Ark. 470, 113 S.W.2d 94 (1938); *Union Bank & Trust Co. v. Horne*, 195 Ark. 481, 113 S.W.2d 1091 (1938) (decisions under prior law).

Publication in one issue of newspaper is not sufficient. *Union Bank & Trust Co. v. Horne*, 195 Ark. 481, 113 S.W.2d 1091 (1938) (decision under prior law).

Publication only once in newspaper held not cured by Acts 1935, No. 142 (repealed by Acts 1937, No. 264). *Union Bank & Trust Co. v. Horne*, 195 Ark. 481, 113 S.W.2d 1091 (1938) (decision under prior law).

It is no longer required that last publication be made two weeks before sale. *Anthony v. Western & S. Life Ins. Co.*, 198 Ark. 445, 128 S.W.2d 1014 (1939) (decision under prior law).

Requirement as to publication of notice is mandatory. *Berry v. Davidson*, 199 Ark. 276, 133 S.W.2d 442 (1939) (decision under prior law).

Acts 1935, No. 170 and Acts 1935, No. 282 were in conflict, both as to the time of publication and as to the duties of the collector. *Thomas v. Branch*, 202 Ark. 338, 150 S.W.2d 738 (1941) (decision under prior law).

**Publication Fee.**

County judge could make binding contract for publishing delinquent tax list at lower rate than the statutory one. Hemp-

stead County v. Star Publishing Co., 186 Ark. 594, 54 S.W.2d 699 (1932) (decision under prior law).

**26-37-108. [Repealed.]**

**Publisher's Notes.** This section, concerning list publication fees, was repealed by Acts 1993, No. 985, § 2. The section was derived from Acts 1955, No. 80, § 3;

1969, No. 116, § 2; 1981, No. 467, § 2; A.S.A. 1947, § 84-1104; Acts 1987, No. 814, § 3. For present law, see § 26-37-107.

**26-37-109. Redemption of tax-delinquent lands not transferred.**

(a)(1) A county collector may charge a fee of two dollars and fifty cents (\$2.50) for the issuance of each certificate of land redemption for each parcel of tax-delinquent land redeemed in the county collector's office.

(2) The fee under this subsection shall be deposited into the county general fund.

(b) The county collector shall accept payment for the redemption of tax-delinquent land that has not been transferred to the Commissioner of State Lands.

(c) The county collector shall pay over to the county treasurer on the first of each month or within ten (10) days thereafter all amounts collected under this section. However, upon a certificate of distribution of the amounts collected under this section being prepared by the county clerk or county collector, which certificate of distribution shall be issued on or before the thirtieth day of each month, the county treasurer shall transfer to the various funds the amount due each fund, such as the county, school, or municipality fund, from the amounts collected under this section.

**History.** Acts 1987, No. 361, § 1; 1989, No. 393, § 1; 1995, No. 232, § 10; 2011, No. 617, § 3.

**Amendments.** The 2011 amendment inserted "tax-delinquent" in the section heading; substituted "A county collector" for "The county collectors of the various counties of the State of Arkansas" in (a)(1); inserted "under this subsection" in

(a)(2); substituted "The county collector or the county treasurer shall accept payment" for "Each county quorum court may authorize the county collector or the county treasurer to accept payment" in (b); and, in (c), substituted "ten (10)" for "five (5)," inserted "county" preceding "collector," and inserted "of distribution."

**SUBCHAPTER 2 — SALE OF TAX-DELINQUENT LANDS****SECTION.**

26-37-201. Publication of notice — Fee.

26-37-202. Procedure to sell.

26-37-203. Conveyance to purchaser — Contest.

26-37-204. Sales set aside.

26-37-205. Distribution of funds.

26-37-206. Void sales.

**SECTION.**

26-37-207. Invalid donation by state.

26-37-208. Wrong name in tax book.

26-37-209. Compensation for improvements.

26-37-210. Sale of timber, oil, gas, or mineral rights.

26-37-211. Purchaser of timber rights.

## SECTION.

26-37-212. Dedication of land as public park.

## SECTION.

26-37-213. Record of lands forfeited.  
26-37-214. Limitation on liability.

**Cross References.** Tax deeds and confirmation of tax sales, § 26-38-101 et seq.

**Publisher's Notes.** Acts 1999, No. 42, § 1, provided: "Disposition of Unclaimed Redemption Money. All funds derived in prior years for the redemption of land pursuant to § 139 of Act 114 of 1883 as amended, formerly compiled as Arkansas Statute 84-1205, shall be transferred, by county court order, to the county general fund."

**Preambles.** Acts 1941, No. 437 contained a preamble which read: "Whereas, in some larger municipalities, the more desirable portions of tracts of land have been platted and utilized, frequently leaving deep ravines and steep hillsides that cannot be utilized with the result that the owners often abandon such property as worthless and cease to pay taxes on it; and for the same reason no one else is willing to buy it from the State, resulting in the property being built up with unsightly shacks and hovels as a squatter section, to the great detriment of the surrounding property and the city as a whole; and in many instances the property would be desirable as a public park and a way should be provided for the acquisition of such tracts of land as public parks; and

"Whereas, in many instances before the depression, acreage tracts in larger municipalities were assessed for taxes on a highly speculative value, far in excess of the true value of the land, resulting in the forfeiture of the same to the State for taxes and which remains unredeemed, said property usually being undesirable tracts of land assessed on a very high basis, and under existing laws such city property cannot be sold at the acreage price as it is the case with rural property, with the result that this type of property remains unredeemed, thereby causing loss of taxes to the State, county, city and school districts;

"Now, therefore...."

**Effective Dates.** Acts 1883, No. 114, § 226: effective on passage.

Acts 1905, No. 303, § 5: effective on passage.

Acts 1939, No. 269, § 3: approved Mar. 10, 1939. Emergency clause provided: "It is found that, where lands have forfeited for both the general taxes and the improvement district assessments, many persons are deterred from purchasing district assessments, by reason of uncertainty of a recovery of the assessments paid in the event of invalidity of the forfeiture for general taxes; and it is further found that such uncertainty results in loss of revenue both to the State and to the improvement districts. Accordingly an emergency is declared to exist, and this Act shall take effect and be in force from and after its passage."

Acts 1941, No. 437, § 4: became law without Governor's signature, Apr. 3, 1941. Emergency clause provided: "It is ascertained and hereby declared that the provisions of this Act are necessary to aid municipalities in preventing sections of towns and cities from building up in an unsanitary squatter areas, and that the funds derived from additional taxes that will be paid by getting property back on the tax books, which additional taxes are urgently needed by the counties and cities for the maintenance of public thoroughfares so as to keep same in a safe condition for the traveling public, and for other purposes that will protect the health of the community, therefore, the immediate operation of this Act is essential for the protection of the public health and safety. An emergency, therefore, is declared and this Act shall take effect and be in force from and after its passage."

Acts 1985, No. 1021, § 3: Apr. 17, 1985. Emergency clause provided: "It is hereby found and determined by the General Assembly that the law relating to the distribution of proceeds received by the State Land Commissioner from the redemption of tax delinquent lands is confusing; that it is urgent that such confusion be corrected at the earliest date possible; and that this Act will provide clarification of such law and should be given effect immediately. Therefore, an emergency is hereby declared to exist and this Act being imme-



diately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1991, No. 1080, § 2, provided: "It is hereby determined by the General Assembly that laws relating to the disposition of tax-delinquent real property are in need of clarification. Therefore, in order to facilitate the tax redemption and sale process and encourage use of the land, this section shall be in full force and effect on July 1, 1991."

Acts 1991, No. 1080, § 3, provided: "It is the intent of the General Assembly of the State of Arkansas that the provisions of this section be applied retroactively to sales taking place prior to the effective date of this act as well as sales taking place thereafter. Furthermore, it is hereby found and determined by the Seventy-Eighth General Assembly that current law excludes former owners from distribution of remaining funds and that such exclusion creates an unnecessary hardship on former owners at this time. Moreover, tax-delinquent land sales are scheduled to commence prior to the regular effective date of acts passed by the Seventy-Eighth General Assembly, making this enacting date necessary in order to prevent additional hardships to former owners. Therefore, this section shall be in full force and effect from and after the passage and approval of this act."

Acts 1991, No. 1080, § 7: July 1, 1991. Emergency clause provided: "It is hereby found and determined by the General Assembly that the laws relating to the redemption and sale of tax-delinquent real property are in need of clarification. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 1991 or as otherwise specified in a particular section thereof."

Acts 1993, No. 791, § 10: Mar. 30, 1993. Emergency clause provided: "It is hereby found and determined by the General Assembly that the laws relating to the collection, redemption and sale of tax delinquent real property are in need of clarification; that Arkansas Courts have

repeatedly voided tax deeds in instances where the county has not strictly complied with statutes; that such holdings have placed a cloud on tax deeds issued by the Commissioner of State Lands; that the present method whereby the Commissioner of State Lands disposes of tax delinquent land meets due process requirements; consequently, when the Commissioner of State Lands complies with the statutes set forth for his office to follow, tax deeds issued should not be void or voidable due to defects in the county procedure, except in cases where taxes have actually been paid. Further, the present situation has a chilling effect on the collection of taxes and encourages the nonpayment of taxes. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1995, No. 714, § 7: Mar. 21, 1995. Emergency clause provided: "It is hereby found and determined by the General Assembly of the State of Arkansas that the laws relating to the forfeiture, sale and redemption of tax delinquent lands are in need of clarification and that this act would clarify certain problems that have arisen. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force from and after its passage and approval."

Acts 2003, No. 1215, § 5: effective for negotiated sales of tax-forfeited property that occur on or after October 1, 2003.

Acts 2005, No. 1880, § 2: July 1, 2005. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that there is currently confusion in the law concerning the disbursement of funds on sales of tax delinquent property by the Commissioner of State Lands; and that this act is immediately necessary because it will provide direction and clarification to determine the validity of claims concerning tax delinquent lands. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2005."

## RESEARCH REFERENCES

**Am. Jur.** 72 Am. Jur. 2d, State Tax., § 904 et seq.      **C.J.S.** 85 C.J.S., Tax., § 744 et seq.

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**26-37-201. Publication of notice — Fee.**

(a)(1) The Commissioner of State Lands shall publish a notice of sale of land upon which the ad valorem property taxes have not been paid in a newspaper having general circulation in the county where the land is located.

(2) The publication fee for the notice shall be the same as set forth in § 26-37-107.

(b) The notice shall:

(1) Contain the assessed value of the land;

(2) Contain the amount of taxes, interest, penalties, and other costs due on the land;

(3)(A) Contain the name of the owner, the legal description, and parcel number of the land.

(B) A part or abbreviated legal description shall be sufficient in the notice if the name of the owner and parcel number are listed;

(4) Contain a list of all interested parties; and

(5) Indicate that the land will be sold to the highest bidder if the bid is equal to at least the assessed value of the land as certified to the Commissioner of State Lands.

(c) The highest bidder shall pay all taxes, interest, penalties, and other costs.

(d)(1) Failure of the notice to contain the information required in subsection (b) of this section does not invalidate an auction sale of the land unless an owner or interested party did not receive notice in substantial compliance with § 26-37-301.

(2) Only an owner or interested party that fails to receive notice in substantial compliance with § 26-37-301 may challenge the validity of the publication notice.

(e) As used in this subchapter, “owner” and “interested party” mean the same as defined in § 26-37-301.

**History.** Acts 1983, No. 626, § 3; A.S.A. 1947, § 84-1128; Acts 1987, No. 814, § 5; 1995, No. 714, § 2; 2005, No. 1231, § 3; 2007, No. 706, § 1; 2011, No. 862, § 1.

**Amendments.** The 2011 amendment, in present (d)(1), substituted “does not invalidate” for “invalidates” and added

“unless an owner or interested party did not receive notice in substantial compliance with § 26-37-301”; added (d)(2); and substituted “As used in this subchapter, ‘owner’ and” for “As used in this section” in (e).

## RESEARCH REFERENCES

**Ark. L. Rev.** Note, Mennonite Board of Missions v. Adams: 11 Years After Fuentes v. Shevin, the Supreme Court Has Found That Creditors Also Have Notice Rights, 37 Ark. L. Rev. 971.

**U. Ark. Little Rock L.J.** Arkansas Law Survey, Robertson, Property, 7 U. Ark. Little Rock L.J. 245.

Notes, Property — Notice to Mortgagees in Tax Sales, 7 U. Ark. Little Rock L.J. 437.

Survey — Property, 10 U. Ark. Little Rock L.J. 605.

**U. Ark. Little Rock L. Rev.** Note, Constitutional & Property Law — Fourteenth Amendment Due Process Clause & Notice to Be Heard — It Felt So Right But Was All So Wrong: United States Supreme Court Rules Arkansas's Tax-Foreclosure Notice Procedure Fails to Satisfy Due Process Clause When Certified Mail Notice Returns "Unclaimed" (Jones v. Flowers, 547 U.S. 220, 126 S. Ct. 1708, 164 L. Ed. 2d 415, 2006 U.S. LEXIS 3451 (2006)), 30 U. Ark. Little Rock L. Rev. 179.

## CASE NOTES

## ANALYSIS

Failure to Include Parcel Number.  
Interested Parties.

**Failure to Include Parcel Number.**

As the failure to include the correct parcel number in the notice of sale, as required by subsection (b) of this section, rendered the tax sale of appellee's land to appellant's predecessor in title void, appellee was entitled as a matter of law to have the deed to appellant's predecessor set aside. Pulaski Choice, L.L.C. v. 2735 Villa Creek, L.P., 2010 Ark. App. 451, — S.W.3d — (2010).

**Interested Parties.**

While this section does not define the term "interested parties" used in subsection (c), it defies logic to proceed on the assumption that potential heirs to lands that are part of an estate would not be parties who are interested in preserving the lands. Sanders v. Ryles, 318 Ark. 418, 885 S.W.2d 888 (1994).

There is no logical reason to include heirs in the definition of "interested persons" in § 28-1-102(a)(11), and then treat them differently for the purposes of the notice requirement in subsection (c) of this section. Sanders v. Ryles, 318 Ark. 418, 885 S.W.2d 888 (1994).

**26-37-202. Procedure to sell.**

(a) Bidders may bid at the sale or mail their bid to the office of the Commissioner of State Lands. Bids shall be delivered at the appropriate place before the deadline established in the notice of sale.

(b) If no one bids at least the assessed value, the Commissioner of State Lands may negotiate a sale. All negotiated sales shall have approval of the Attorney General.

(c) The Commissioner of State Lands shall conduct tax-delinquent sales in the county wherein the land is located, unless the Commissioner of State Lands determines that there are not enough parcels of land to justify a sale in one (1) county only. In that case, the Commissioner of State Lands may hold a tax-delinquent land sale in one (1) location and thereat sell land located in more than one (1) county if the counties wherein the lands are located are adjoining counties.

(d) The sales shall be conducted on the dates specified in the notices required by this subchapter.

(e)(1) After a sale of the land by the Commissioner of State Lands, including a negotiated sale, the Commissioner of State Lands shall



notify the owner and all interested parties of the right to redeem the land within thirty (30) days after the date of the sale paying all taxes, penalties, interest, and costs due, including the cost of the notice.

(2) The notice under subdivision (e)(1) of this section shall be sent by regular mail to the last known address of the owner and all interested parties.

(3) If the land is not redeemed, a limited warranty deed will be issued by the Commissioner of State Lands to the purchaser.

(f) As used in this section, "interested party" has the same meaning as in § 26-37-301.

**History.** Acts 1983, No. 626, § 3; A.S.A. 1947, § 84-1128; Acts 1987, No. 814, § 5; 2007, No. 706, § 2.

### RESEARCH REFERENCES

**U. Ark. Little Rock L.J.** Arkansas Law Survey, Robertson, Property, 7 U. Ark. Little Rock L.J. 245.

Survey — Property, 10 U. Ark. Little Rock L.J. 605.

**U. Ark. Little Rock L. Rev. Note,** Constitutional & Property Law — Fourteenth Amendment Due Process Clause & Notice to Be Heard — It Felt So Right But

Was All So Wrong: United States Supreme Court Rules Arkansas's Tax-Foreclosure Notice Procedure Fails to Satisfy Due Process Clause When Certified Mail Notice Returns "Unclaimed" (Jones v. Flowers, 547 U.S. 220, 126 S. Ct. 1708, 164 L. Ed. 2d 415, 2006 U.S. LEXIS 3451 (2006), 30 U. Ark. Little Rock L. Rev. 179.

### CASE NOTES

#### In General.

Where tax notices sent to landowner contained the sale dates and the tracts offered for sale at public auctions on those dates, but no legally-sufficient bid was received on the public sale date and a negotiated sale necessarily took place on a

later date, the conveyance of each tract was in conformity with Arkansas law. Price v. Rylwell, LLC, 95 Ark. App. 228, 235 S.W.3d 908 (2006).

**Cited:** Donathan v. McDill, 304 Ark. 242, 800 S.W.2d 433 (1990).

### 26-37-203. Conveyance to purchaser — Contest.

(a) If the tax-delinquent land is not redeemed within the thirty-day period under § 26-37-202, the Commissioner of State Lands shall convey the tax-delinquent land by issuing a limited warranty deed to the land.

(b)(1) Except as provided in subdivisions (b)(2) and (3) of this section, an action to contest the validity of a conveyance under this section is barred if not commenced within one (1) year after the date of the conveyance.

(2) A cause of action by a person suffering a mental incapacity, a minor, or a person serving in the United States armed forces during time of war during the one-year period under subdivision (b)(1) of this section is barred if not commenced within two (2) years after the disability is removed, the minor reaches majority, or the person is

released from active duty during time of war with the United States armed forces.

(3) An action to challenge the validity of a conveyance to a purchaser of land that was sold at a negotiated sale under § 26-37-101 is barred if not commenced within ninety (90) days after the date of the conveyance.

(c) A deed issued after January 1, 1987, by the Commissioner of State Lands is not void or voidable on the ground that the county did not strictly comply with the laws governing tax-delinquent land.

(d) This section does not prevent a taxpayer from contesting the validity of a deed issued by the Commissioner of State Lands on the ground that taxes have actually been paid.

**History.** Acts 1983, No. 626, § 4; A.S.A. 1947, § 84-1129; Acts 1987, No. 814, § 5; 1989, No. 938, § 1; 1993, No. 791, § 4; 2003, No. 1215, § 1; 2005, No. 1231, § 4; 2007, No. 1036, § 3; 2011, No. 862, § 2.

**Amendments.** The 2011 amendment, in (a), inserted “under § 26-37-202” and substituted “convey the tax-delinquent land by issuing” for “issue”; in (b)(2), sub-

stituted “one-year period under subdivision (b)(1) of this section” for “two-year period” and inserted “during time of war” and “United States”; and deleted “if prior to the issuance of the deed the Commissioner of State Lands complied with the laws governing the disposition of tax-delinquent land” at the end of (c).

### RESEARCH REFERENCES

**U. Ark. Little Rock L. Rev.** Survey — Property, 10 U. Ark. Little Rock L.J. 605.  
Survey of Legislation, 2003 Arkansas General Assembly, Taxation, Tax For-

feited Land Redemption, 26 U. Ark. Little Rock L. Rev. 497.

### CASE NOTES

#### Statute of Limitations.

Since 50 U.S.C.S. § 525 (now codified at 50 U.S.C.S. app. § 526) tolled the statute of limitations for the time within which a husband and wife had to bring an action to set aside a default judgment that quieted title in favor of a purchaser who bought the husband and wife’s property at a tax sale, the trial court erred in denying a motion to set aside the default judgment where the action was filed within two years of husband’s retirement from the military, as required by this section. *Small v. Kulesa*, 90 Ark. App. 108, 204 S.W.3d 99 (2005), cert. denied, 546 U.S. 938, 126 S. Ct. 427, 163 L. Ed. 2d 325 (2005).

Incapacitated sisters could not tack their disability onto their brother’s disability for the purpose of extending the redemption period after the brother’s land was certified to the Arkansas State Land Commissioner for failure to pay taxes; rather, the sisters had the right to redeem

the land within two years after the brother’s disability was removed by death. *Givens v. Haybar, Inc.*, 95 Ark. App. 164, 234 S.W.3d 896 (2006).

Debtor who claimed an equitable interest in the property based on an alleged oral rent-to purchase agreement with the owner could challenge the tax sale and transfer of property to the subsequent purchaser because the state did not file an action in Chancery Court under § 26-38-206, to bar any subsequent claims. Further, § 26-37-203 gave the debtor two hears to contest the validity of the conveyance. *In re Paro*, 362 B.R. 419 (Bankr. E.D. Ark. 2007).

Although the farm argued that, even if the notice was constitutionally insufficient, the railroad’s claim to the mineral rights was barred by the one-year limitations period in this section, the court found that: (1) § 14-15-404, which provided that subsequent purchasers of real

estate were put on constructive notice of a properly recorded deed, § 14-15-404 did not govern the running of the statute of limitations as to the railroad because it was not a subsequent purchaser of the mineral rights; and (2) imposition of this section presupposed adequate notice to the landowner, and due process required notice reasonably calculated under all of the circumstances to inform the property

owner of the taking so that he may object, and if that notice was lacking, the passage of one year from the taking, without more, would not satisfy the requirements of due process. *Linn Farms & Timber Ltd. P'ship v. Union Pac. R.R.*, — F. Supp. 2d —, 2010 U.S. Dist. LEXIS 51714 (E.D. Ark. May 25, 2010).

**Cited:** *Bill's Printing, Inc. v. Carder*, 82 Ark. App. 466, 120 S.W.3d 611 (2003).

## **26-37-204. Sales set aside.**

(a) In the event the sale is set aside by legal action or if the land is proven to be nonexistent or double assessed, the purchaser shall be entitled to reimbursement of moneys paid.

(b) The Commissioner of State Lands shall have the authority to set aside any sale. In the event the Commissioner of State Lands determines that a sale shall be set aside, the purchaser may be entitled to reimbursement of moneys paid to the Commissioner of State Lands.

(c) In cases where sales may be set aside by the Commissioner of State Lands or by legal action by the record owner or the heirs or assigns of the record owner, the record owner or the heirs or assigns of the record owner shall pay all back taxes, penalties, interest, and costs charged against the land.

(d) If the Commissioner of State Lands determines that the owner and all interested parties did not receive the required notice of sale and right to redeem, the Commissioner of State Lands shall:

(1) Set aside the sale; or

(2) Notify the owner and interested parties of the reasons why the Commissioner of State Lands does not believe the sale should be set aside.

(e) As used in this section, "interested party" means the same as in § 26-37-301.

(f) The Commissioner of State Lands shall not be liable for any monetary damages to any owner, interested party, or purchaser of tax-delinquent land for any action taken or any omission of action related to the sale of tax-delinquent land.

(g) An owner or interested party shall tender a cashier's check or cash equal to the amount of all taxes, penalties, interest, and costs charged against the tax-delinquent land:

(1) Into the registry of the court before filing a complaint to set aside a sale of the tax-delinquent land; or

(2) With the Commissioner of State Lands before asking the Commissioner of State Lands to set aside a sale of the tax-delinquent land.

**History.** Acts 1983, No. 626, § 5; A.S.A. 1947, § 84-1130; Acts 1991, No. 1080, § 2; 2007, No. 706, § 3; 2011, No. 862, § 3.

**Amendments.** The 2011 amendment added (g).



CASE NOTES

ANALYSIS

Bona Fide Purchaser.  
Reformation.  
Reimbursement.

**Bona Fide Purchaser.**

Where a diligent inquiry would not have disclosed tax sale buyers' prior interest in certain real property, since their limited-warranty deed had been cancelled by the Commissioner of State Lands, a vendee of that property was a bona fide purchaser; therefore, the trial court erred in quieting title in the tax sale buyers, even assuming arguendo that the Commissioner had not been authorized under this section to issue the cancellation deed. *Bill's Printing, Inc. v. Carder*, 357 Ark. 242, 161 S.W.3d 803 (2004).

Party claiming bona fide purchaser status is not obliged to make inquiry into the circumstances surrounding the legal legitimacy of a cancellation deed or redemption deed issued by the Commissioner of State Lands. *Bill's Printing, Inc. v. Carder*, 357 Ark. 242, 161 S.W.3d 803 (2004).

**Reformation.**

Reformation does not apply where land has been forfeited to and sold by the state under an incomplete and defective description. *Undernehr v. Sandlin*, 35 Ark. App. 207, 816 S.W.2d 635 (1991).

**Reimbursement.**

Where tax sale was void, the buyer was entitled to an order for refund of the amount paid for the tax deed. *Undernehr v. Sandlin*, 35 Ark. App. 207, 816 S.W.2d 635 (1991).

**26-37-205. Distribution of funds.**

(a) All moneys collected by the Commissioner of State Lands from the sale or redemption of tax-delinquent lands shall be distributed as follows:

(1)(A) First, to the Commissioner of State Lands, the penalties, the collection fees, the sale costs, and the other costs as prescribed by law.

(B) The sale costs, include without limitation fees for title work;

(2) Second, to each county an amount equal to the taxes due plus interest and costs to the county as certified by the county collector, which amount shall be held in an escrow fund administered by and remitted to the county within one (1) calendar year of the receipt of the moneys by the Commissioner of State Lands;

(3)(A) Third, to each county an amount equal to the delinquent personal property taxes, plus penalty, of the owner or owners of the tax-delinquent land as certified by the county collector, which amount shall be held in an escrow fund administered by and remitted to the county after one (1) calendar year of the receipt of the moneys by the Commissioner of State Lands.

(B) The Commissioner of State Lands shall review the information provided by the county collector and any other interested party to ascertain:

(i) Whether the personal property tax and penalty qualifies to be withheld from the tax-delinquent land sale proceeds; and

(ii) The amount of personal property tax and penalty that qualifies under this subdivision (a)(3) to be withheld.

(C) If the Commissioner of State Lands is required to make a refund of the personal property taxes withheld under subdivision (a)(3)(A) of this section to a purchaser of tax-delinquent lands for any

reason, the amount of the refund shall be recovered by the Commissioner of State Lands from the county or counties that originally received the proceeds under this subdivision (a)(3) of this section of the tax-delinquent land sale.

(D) The Commissioner of State Lands shall promulgate rules and forms needed to administer this subdivision (a)(3).

(E) This section does not require the Commissioner of State Lands to search county records to determine whether an owner of tax-delinquent land owes delinquent personal property taxes.

(F) This section does not grant a county a right to a lien against real property for the payment of delinquent personal property tax; (4)(A) Fourth, to the Department of Finance and Administration an amount equal to the delinquent tax, penalty, and interest owed to the Department of Finance and Administration and for which certificates of indebtedness have been filed against the owner or owners of the tax-delinquent land as certified by the Department of Finance and Administration, which amount shall be held in an escrow fund administered by and remitted to the Department of Finance and Administration within one (1) calendar year after the receipt of the moneys by the Commissioner of State Lands.

(B) If the Commissioner of State Lands is required to make a refund of the taxes withheld under subdivision (a)(4)(A) of this section to a purchaser of tax-delinquent lands for any reason, the amount of the refund shall be recovered by the Commissioner of State Lands from the Department of Finance and Administration from the proceeds originally received under this subdivision (a)(4).

(C) The Commissioner of State Lands shall promulgate rules and forms needed to administer this subdivision (a)(4); and

(5) Fifth, to be placed in another escrow fund administered by the Commissioner of State Lands, the remainder, if any.

(b) If no actions are brought within the time limits prescribed under this subchapter, the remaining funds, if any, shall be distributed by the Commissioner of State Lands as follows:

(1) Ten percent (10%) of the remaining funds up to a maximum amount of five hundred dollars (\$500) shall be paid to the Commissioner of State Lands for the administration of the distribution of the funds;

(2)(A) After payment is made to the Commissioner of State Lands pursuant to subdivision (b)(1) of this section, the amount left in the remaining funds shall be paid to the former owners of the tax-delinquent land.

(B)(i) "Former owner" means a person, partnership, corporation, or other legal entity capable of owning real property in the State of Arkansas and that holds record title to the real property on the date of sale by the Commissioner of State Lands.

(ii) "Former owner" does not include heirs or relations beyond the first degree of consanguinity.

(C)(i) A former owner must file an application with the Commissioner of State Lands requesting the release of the funds.

(ii) The application shall be provided by the Commissioner of State Lands and shall require proof of ownership of the tax-delinquent land as well as proof of authority to act on behalf of the owner.

(iii) The application may require other information the Commissioner of State Lands deems necessary before the release of the funds.

(D)(i) The former owner shall release and relinquish all rights, title, and interests in and to the tax-delinquent land.

(ii) The Commissioner of State Lands shall provide a release deed to the former owner to execute.

(E) In the event of any dispute, claim, or multiple claims of ownership or controversy regarding the release of the funds, the Commissioner of State Lands may require the party or parties to provide a court order to resolve the issues and to establish the party or parties entitled to the remaining funds.

(F) An agreement by a former owner, the primary purpose of which is to locate, deliver, recover, or assist in the recovery of remaining funds, is enforceable only if the agreement:

(i) Is in writing;

(ii) Clearly sets forth the nature of the property and the services to be rendered;

(iii) Provides a fee of not more than ten percent (10%) of the recovery;

(iv) Is signed by the former owner; and

(v) States the value of the remaining funds before and after the fee or other compensation has been deducted.

(G)(i) An agreement covered by subdivision (b)(2)(F) of this section that provides for compensation that is unconscionable is unenforceable except by the former owner.

(ii) A former owner who has agreed to pay compensation that is unconscionable may maintain an action to reduce the compensation to a conscionable amount.

(iii) The court may award reasonable attorney's fees to a former owner that prevails in the action.

(H) Subdivision (b)(2)(G) of this section does not preclude a former owner from asserting that an agreement covered by subdivision (b)(2)(F) of this section is invalid on grounds other than unconscionable compensation.

(I)(i) The Commissioner of State Lands shall make all funds payable to the former owner.

(ii) No funds shall be made payable to any other person or entity other than the former owner without a court order directing the payment to the other person or entity.

(iii) No interest shall be paid to the former owner on the funds.

(J)(i) Anyone filing a claim or assisting with the filing of a claim that results in the erroneous payment of a claim is responsible for the repayment of all funds paid.

(ii) Any claim filed fraudulently is punishable as a Class D felony; and



(3)(A) Any funds placed in escrow prior to July 1, 2005, shall be held in escrow for five (5) years and at the end of the five-year period, if the funds have not been distributed, the escrow funds shall escheat to the county in which the property is located.

(B) Any funds placed in escrow on and after July 1, 2005, shall be held for three (3) years, and at the end of the three-year period, if the funds have not been distributed, the escrow funds shall escheat to the county in which the property is located.

(c) All funds distributed to each county by the Commissioner of State Lands from the redemption or sale of tax-delinquent lands, including any interest and costs, are to be distributed to the applicable taxing units where the delinquent land is located within the county in the manner and proportion that the taxes would have been distributed if they had been collected in the year due.

(d) All funds received by a county from the redemption of tax-delinquent land at the county level, including any penalty, interest, and costs, are to be distributed to the applicable taxing units where the delinquent land is located within the county in the manner and proportion that the taxes would have been distributed if they had been collected in the year due.

(e) This section shall be severable, and if any phrase, clause, sentence, or provision of this section is declared to be contrary to the laws of this state, the validity of the remainder of this section shall not be affected.

**History.** Acts 1983, No. 626, § 6; 1985, No. 1021, § 1; A.S.A. 1947, § 84-1131; Acts 1987, No. 814, § 7; 1989, No. 424, § 1; 1991, No. 1080, § 3; 2003, No. 1215, § 2; 2005, No. 1880, § 1; 2009, No. 400, § 1; 2011, No. 785, § 1.

**A.C.R.C. Notes.** Act 1989, No. 424, § 1, purported to amend § 26-37-105, but actually amended this section.

**Amendments.** The 2009 amendment,

in (a), inserted (a)(3), redesignated the subsequent subdivision accordingly, substituted "Fourth" for "Third" in (a)(4), and made a related change.

The 2011 amendment substituted "tax-delinquent" for "tax delinquent" throughout the section; and inserted (a)(4) and redesignated the remaining subdivision accordingly.

## RESEARCH REFERENCES

**U. Ark. Little Rock L. Rev. Survey** — Property, 10 U. Ark. Little Rock L.J. 605.  
Survey of Legislation, 2003 Arkansas General Assembly, Taxation, Tax For-

feited Land Redemption, 26 U. Ark. Little Rock L. Rev. 497.

## 26-37-206. Void sales.

If the taxes charged on any land or lot, or part thereof, are regularly paid, and the land or lot erroneously returned delinquent and sold for taxes, the sale of the land or lot shall be void and the money paid by the purchaser at such a void sale shall be returned to him or her by the officer having the money in charge, on the order of the county court that the land was erroneously returned delinquent and sold for taxes.

**History.** Acts 1883, No. 114, § 210, p. 199; C. & M. Dig., § 10181; Pope's Dig., § 13964; A.S.A. 1947, § 84-1116.

**Cross References.** Adverse claims to tax title, § 26-38-107.

## CASE NOTES

### ANALYSIS

In General.  
Confirmation of Title.  
Reformation.  
Refund.  
Transfer of Title.

#### **In General.**

Where owner attempts to pay his taxes and oversight or mistake of collector prevents him from doing so, sale of land for taxes is void. *Brown v. Bridges*, 227 Ark. 1006, 304 S.W.2d 939 (1957).

#### **Confirmation of Title.**

Although forfeiture of lands on which taxes had been paid was void, confirmation of title obtained under tax sale barred all controversy as to title. *Lonerger v. Baber*, 59 Ark. 15, 26 S.W. 13 (1894).

Where land upon which taxes had been paid was erroneously sold for taxes, owner who sold land before confirmation of tax title could show the invalidity of the tax sale as a defense to suit on his warranty of

title, although confirmation barred all controversy as to title. *Lonerger v. Baber*, 59 Ark. 15, 26 S.W. 13 (1894).

#### **Reformation.**

Reformation does not apply where land has been forfeited to and sold by the state under an incomplete and defective description making it void. *Undernehr v. Sandlin*, 35 Ark. App. 207, 816 S.W.2d 635 (1991).

#### **Refund.**

Where tax sale was void, the buyer was entitled to an order for refund of the amount paid for the tax deed. *Undernehr v. Sandlin*, 35 Ark. App. 207, 816 S.W.2d 635 (1991).

#### **Transfer of Title.**

Plaintiff acquired no title by tax sale which was void. *Undernehr v. Sandlin*, 35 Ark. App. 207, 816 S.W.2d 635 (1991).

**Cited:** Board of Conference Claimants v. Phillips, 187 Ark. 1113, 63 S.W.2d 988 (1933).

## **26-37-207. Invalid donation by state.**

If the title of any person holding lands by virtue of a donation deed from the state shall, for any cause, be determined to be invalid in any action brought by or against him or her at law or in equity, then such donor, his or her heirs, successors, and assigns, shall be entitled, in addition to all other available remedies, to a lien upon the lands for the amount of the taxes, penalty, and costs for which the lands were originally forfeited and sold, plus all taxes on the lands which have subsequently been paid by the purchaser, his or her heirs, successors, and assigns, together with all taxes and improvement district assessments which may have been paid on the lands following the donation, with interest on the amount paid for the lands and on the taxes and assessments from the respective dates of payment until repaid at the rate of six percent (6%) per annum. The court rendering judgment or decree against the validity of the donation shall declare and enforce the lien.

**History.** Acts 1939, No. 269, § 1; A.S.A. 1947, § 84-1119.

**Publisher's Notes.** Acts 1939, No. 269,

§ 2, provided that the provisions of this act shall be applicable both retroactively and prospectively.

## CASE NOTES

## ANALYSIS

Applicability.  
Costs.  
Quieting Title.

**Applicability.**

Where title to property was acquired by improvement district in 1938 under foreclosure proceedings for delinquent benefits assessments and while title was in the district property was sold to state for nonpayment of 1939 general taxes, deed from state in 1943 (title still being in district) was void, and this section had no applicability. *Baiers v. Cammack*, 207 Ark. 827, 182 S.W.2d 938 (1944).

**Costs.**

Where owner made valid tender of taxes due to holder of tax title, trial court did not err in assessing costs against holder of tax title where it determined tax title was

void. *Schuman v. Mosley*, 220 Ark. 426, 248 S.W.2d 103 (1952).

**Quieting Title.**

Although tax sale is invalid, owners cannot obtain decree quieting title without paying taxes for intervening years. *Buschow Lumber Co. v. Witt*, 212 Ark. 995, 209 S.W.2d 464 (1948).

Mortgagees who purchased mortgaged premises at a tax sale during the pendency of a foreclosure of the mortgage were merely paying taxes they were obligated to pay and were not entitled to reimbursement for the money expended by them in so purchasing the premises on the quieting of title in the mortgagee. *Booth v. Peoples Loan & Inv. Co.*, 248 Ark. 1213, 455 S.W.2d 868 (1970).

**Cited:** *Bell v. Board of Dirs.*, 109 Ark. 433, 160 S.W. 390 (1913); *Hutton v. King*, 134 Ark. 463, 205 S.W. 296 (1918).

**26-37-208. Wrong name in tax book.**

No sale of any land or lot for delinquent taxes shall be considered invalid on account of its having been charged on the tax book in any other name than that of the rightful owner if the land or lot is, in other respects, sufficiently described on the tax books and the taxes for which the land or lot is sold are due and unpaid at the time of the sale.

**History.** Acts 1883, No. 114, § 153, p. 199; C. & M. Dig., § 10118; Pope's Dig., § 13882; A.S.A. 1947, § 84-1120.

## CASE NOTES

**Cited:** *Aldridge v. Tyrrell*, 301 Ark. 116, 782 S.W.2d 562 (1990).

**26-37-209. Compensation for improvements.**

(a)(1) No purchaser under this chapter of any land or town lot or city lot nor any person claiming under him or her shall be entitled to any compensation for any improvement that he or she shall make on the land or town lot or city lot within the time frame established in § 26-37-203.

(2) No purchaser of land that was sold at a negotiated sale under § 26-37-101 shall be entitled to any compensation for any improvement that he or she makes to the land within the time frame established in § 26-37-203.



(b)(1) For an improvement made after the expiration of the time frame established in § 26-37-203, the purchaser under this chapter shall be allowed the full cash value of the improvement, and the allowance shall be a charge upon the land.

(2) For an improvement made after the expiration of the time frame established in § 26-37-203 to a subdivided lot that was purchased at a negotiated sale under § 26-37-202(b), the purchaser shall be allowed the full cash value of the improvement, and the allowance shall be a charge upon the land.

**History.** Acts 1883, No. 114, § 155, p. 199; C. & M. Dig., § 10120; Pope's Dig., § 13884; A.S.A. 1947, § 84-1121; Acts 2003, No. 1215, § 3; 2005, No. 1231, § 5; 2007, No. 1036, § 4.

**Cross References.** Ejectment proceedings where land held by tax title, § 18-60-212.

RESEARCH REFERENCES

**U. Ark. Little Rock L. Rev.** Survey of Legislation, 2003 Arkansas General Assembly, Taxation, Tax Forfeited Land Re-

demption, 26 U. Ark. Little Rock L. Rev. 497.

CASE NOTES

ANALYSIS

In General.  
Applicability.  
Date of Sale.  
Purchasers — Claimants.  
Value of Improvements.

**In General.**

An action to redeem lands is not subject to dismissal for failure to file affidavit of tender of taxes and value of improvements, but the recovery of such taxes and improvements is required before a writ of possession will issue. *Reynolds v. Plants*, 196 Ark. 116, 116 S.W.2d 350 (1938); *Farrell v. Sanders*, 204 Ark. 1068, 166 S.W.2d 889 (1942).

Nonpossessory suit in equity to cancel alleged void tax sale could not be converted into action in ejectment so as to deprive defendant of all rights to have compensation for his improvements. *Patterson v. McKay*, 202 Ark. 241, 150 S.W.2d 196 (1941).

Where land was redeemed under Acts 1934 (2nd Ex. Sess.), No. 2, it was proper for court to offset value of improvements with rents and profits. *Rodgers v. Massey*, 204 Ark. 225, 161 S.W.2d 378 (1942).

**Applicability.**

Provisions in Act of January 10, 1857, authorizing allowance for improvements had no applicability to lands sold by a county clerk before forfeiture to state. *Hershy v. Thompson*, 50 Ark. 484, 8 S.W. 689 (1887); *Alexander v. Capps*, 100 Ark. 488, 140 S.W. 722 (1911) (preceding decisions under prior law).

This section has no applicability to one who has redeemed forfeited land from the state. *Dedmon v. Hawkins*, 211 Ark. 840, 203 S.W.2d 183 (1947).

**Date of Sale.**

Where improvements are made before purchase from state, purchaser will not be compensated. *Anderson v. Williams*, 59 Ark. 144, 26 S.W. 818 (1894).

Provision that purchaser at tax sale is not entitled to compensation for improvements made within two years of "sale" means the original sale (whether to state or individual), so that purchaser of land from state can be entitled to a lien for improvements although made less than two years after date of his deed, as this section runs from the time the state originally acquired the land. *Gulley v. Blake*, 214 Ark. 578, 217 S.W.2d 257 (1949).

Provision in this section prohibiting

compensation to purchaser for improvements made on land acquired by tax title if made within two years from date of sale refers to date of sale to state, and not date of tax deed from state. *Topham v. Hodges*, 215 Ark. 407, 221 S.W.2d 27 (1949).

Where vacant lots were forfeited to state in 1933 for nonpayment of 1932 taxes, and state deeded lots to plaintiff in 1940, and state by mistake transferred same lots to defendants in 1946, who made improvements thereon, and plaintiff filed an action to cancel deeds to the defendant, defendants were entitled to recover cash value of improvements from plaintiff, as improvements were made over two years after sale to state in 1933. *Topham v. Hodges*, 215 Ark. 407, 221 S.W.2d 27 (1949).

Tax purchaser who makes improvements on property held under defective tax title is not entitled to recover for the improvements in absence of proof that they were made more than two years after date of tax sale. *Teer v. Plant*, 238 Ark. 92, 378 S.W.2d 663 (1964).

#### **Purchasers — Claimants.**

Tax purchaser has right to make and recover for improvements without exacting showing of belief in the integrity of his title as required by § 18-60-213. *Bender v. Bean*, 52 Ark. 132, 12 S.W. 180 (1889), modified, 52 Ark. 146, 12 S.W. 241 (1889); *Beloate v. State ex rel. Att'y Gen.*, 187 Ark. 17, 58 S.W.2d 423 (1933); *Wilkins v. Maggard*, 190 Ark. 532, 79 S.W.2d 1003 (1935).

If claimant asserts right to redeem, he must pay proper amount for improvements when ascertained; however, a court should not order land sold in aid of effort to redeem. *Waterman v. Irby*, 76 Ark. 551, 89 S.W. 844 (1905).

Occupying tax title purchaser may recover value of all improvements made by him, irrespective of his belief in the integrity of his tax title and regardless of color of title as reflected by his deed or other muniments of title. *Wilkins v. Maggard*, 190 Ark. 532, 79 S.W.2d 1003 (1935).

Assignee of a donation certificate is a trespasser and has no rights under this section. *Young v. Pumphrey*, 191 Ark. 98, 83 S.W.2d 84 (1935).

In redeeming lands under Acts 1934 (2nd Ex. Sess.), No. 2, § 3, a donee had right to bring action for improvements while still in possession. *Ragan v. Henson*, 192 Ark. 679, 94 S.W.2d 117 (1936).

Person in possession of land who made improvements under donation certificate had a right, upon redemption of the property, to recover lien declared for value of improvements made, regardless of whether land was homestead of the one redeeming it. *Page v. Francis*, 196 Ark. 822, 120 S.W.2d 161 (1938).

Agent of original owner of land was not entitled to recover for improvements where he permitted land to be sold for taxes and secured tax deed in his name. *Harris v. Gilmore*, 197 Ark. 641, 124 S.W.2d 810 (1939).

Where nephew of life tenant (being one of the heirs) obtained tax deed from state, it amounted to a redemption from tax sale, and he was not entitled to be paid for improvements. *Smith v. Davis*, 200 Ark. 547, 140 S.W.2d 126 (1940).

Where holder of donation certificate forfeited his rights, he could not recover for improvements from subsequent purchaser from state. *Ware v. Dazey*, 201 Ark. 116, 144 S.W.2d 463 (1940).

Purchaser from state under deed void because title to property was at the time in improvement district was not entitled to recover from subsequent purchaser from the district for improvements made while title was in the district. *Baiers v. Cammack*, 207 Ark. 827, 182 S.W.2d 938 (1944).

Provisions allowing cash value for improvements made on land acquired by tax deed does not require that purchaser making improvements be an innocent purchaser; so fact that another and prior purchaser recorded his deed does not prevent second purchaser from recovering cash value of improvements. *Topham v. Hodges*, 215 Ark. 407, 221 S.W.2d 27 (1949).

Where husband redeemed property from taxes for benefit of his wife, the life tenant, he was not entitled to claim title as against the remaindermen on the ground of improvements, since improvements were not made by the purchaser of a tax title. *Ingram v. Seaman*, 223 Ark. 414, 267 S.W.2d 6 (1954).

Deed conveying only life estate is not sufficient "color of title" to bring grantee under the benefits of this section. *Perry v. Rye*, 223 Ark. 594, 267 S.W.2d 507 (1954).

#### **Value of Improvements.**

Provision that improvements shall be a "charge" upon the land means that they

shall be a "lien" upon the land. Page v. Francis, 196 Ark. 822, 120 S.W.2d 161 (1938).

Evidence justified award for improvements made under defective tax title. Topham v. Hodges, 215 Ark. 407, 221 S.W.2d 27 (1949).

Purchaser held not entitled to recover for improvements in absence of proof of their value to property. Teer v. Plant, 238 Ark. 92, 378 S.W.2d 663 (1964).

**Cited:** Patterson v. McKay, 202 Ark. 241, 150 S.W.2d 196 (1941).

### **26-37-210. Sale of timber, oil, gas, or mineral rights.**

(a) If a timber right, an oil right, a gas right, or a mineral right is owned or assessed separate from the fee in the land and the taxes due on the right are not paid, the timber right, oil right, gas right, or mineral right is subject to the tax laws governing forfeiture and sale of tax-delinquent land.

(b) Any timber right, oil right, gas right, or mineral right forfeited and certified to the Commissioner of State Lands is subject to disposition as provided in this chapter.

**History.** Acts 1929, No. 129, § 5; Pope's Dig., § 8633; A.S.A. 1947, § 84-1122; Acts 2007, No. 827, § 211.

### **CASE NOTES**

**Cited:** Herford v. Scales, 240 Ark. 436, 399 S.W.2d 653 (1966).

### **26-37-211. Purchaser of timber rights.**

The sale of timber rights for delinquent taxes shall vest the purchaser with whatever right to enter, cut, and remove the timber that was possessed by the former owner.

**History.** Acts 1905, No. 303, § 4, p. 738; C. & M. Dig., § 10095; Pope's Dig., § 13858; A.S.A. 1947, § 84-1123.

### **26-37-212. Dedication of land as public park.**

If an owner of land dedicates it to the city where the land is located for park purposes by a filed and recorded plat and bill of assurance and there are any delinquent general taxes of the state or a political subdivision of the state against the land, upon a showing that title to the land is dedicated to the city as a public park, the Commissioner of State Lands and the proper county officials of the county where the land lies shall cancel any delinquent general taxes.

**History.** Acts 1941, No. 437, § 1, A.S.A. 1947, § 84-1124; Acts 2007, No. 827, § 212.



**26-37-213. Record of lands forfeited.**

(a) The Commissioner of State Lands shall keep a permanent record of all lands forfeited to the state for taxes and note in the record in whose name the forfeited land was listed, for what year or years it was taxed, the amount of tax due thereon, and when forfeited.

(b) The record shall be open to the inspection of anyone.

**History.** Acts 1987, No. 814, § 4.

**RESEARCH REFERENCES**

**U. Ark. Little Rock L.J.** Survey — Property, 10 U. Ark. Little Rock L.J. 605.

**26-37-214. Limitation on liability.**

Except as provided in § 26-37-204(a) and (b), the Commissioner of State Lands as well as the county from which the property is certified shall be immune from liability for damages, costs, fees, or compensation for improvements made to the property arising from the sale of tax-delinquent property even if the sale is found to be invalid or void as a result of error by the Commissioner of State Lands or the county.

**History.** Acts 2003, No. 1215, § 4.

**RESEARCH REFERENCES**

**U. Ark. Little Rock L. Rev.** Survey of Legislation, 2003 Arkansas General Assembly, Taxation, Homestead Owner Redemption, 26 U. Ark. Little Rock L. Rev. 502.

**SUBCHAPTER 3 — REDEMPTION OF REALTY TO BE SOLD FOR TAXES****SECTION.**

- 26-37-301. Notice to owner.
- 26-37-302. Payment required.
- 26-37-303. Redemption deed.
- 26-37-304. [Repealed.]
- 26-37-305. Rights of persons under disability.
- 26-37-306. Procedure for redemption by persons under disability.
- 26-37-307. Joint tenant, tenant in common, or coparcener.
- 26-37-308. Portion of tract of land.
- 26-37-309. Uncertified sales to state.
- 26-37-310. Procedure for redeeming land certified to state.

**SECTION.**

- 26-37-311. Proceedings to redeem prior to sale by state.
- 26-37-312. Reassessment of unimproved land in municipality.
- 26-37-313. Reassessment of parcels of land upon depreciation since forfeiture.
- 26-37-314. Sale of tax-delinquent severed mineral interests prohibited.
- 26-37-315. Redemption of homestead by taxpayer.
- 26-37-316. Notice requirement.

**Publisher's Notes.** Acts 1999, No. 42, § 1, provided: "Disposition of Unclaimed

Redemption Money. All funds derived in prior years for the redemption of land

pursuant to § 139 of Act 114 of 1883 as amended, formerly compiled as Arkansas Statute 84-1205, shall be transferred, by county court order, to the county general fund."

**Cross References.** Purchaser at delinquent sale of improvement district may redeem, § 14-86-1601 et seq.

**Preambles.** Acts 1887, No. 13 contained a preamble which read: "Whereas, 1st. Lands have been sold to the State under proceedings purporting to have been had in the courts of this State by virtue of an Act of the General Assembly thereof entitled 'An Act to enforce the payment of Overdue Taxes,' approved March 12, 1881, when the taxes for the alleged nonpayment of which such lands were so sold under said proceedings and decrees of said courts, had been in fact paid prior to any such sales, proceedings or decrees of said courts; and,

"Whereas, 2d. Also the lands of many other persons were under like proceedings and decrees aforesaid had, by virtue of said act, sold to the State, where the owners thereof had paid taxes which they supposed were on such lands of their own, but which taxes so paid, owing to an erroneous description in the numbers of the same afterwards were ascertained to be on other lands than their own, and their lands sold to the State as aforesaid; and,

"Whereas, 3d. Said overdue tax act was a novel proceeding in this State that was productive of hardships in other respects, and it is but just to them that the owners of land at the time of such sale to the State, should have a limited time to redeem the same therefrom, without loss to the State, provided said lands shall not have been sold by the State prior to any such application to redeem;

"Now, therefore...."

**Effective Dates.** Acts 1877, No. 34, § 7: effective on passage.

Acts 1883, No. 114, § 226: effective on passage.

Acts 1891, No. 151, § 9: effective on passage.

Acts 1893, No. 96, § 4: effective on passage.

Acts 1895, No. 31, § 2: effective on passage.

Acts 1919, No. 142, § 4: approved Mar. 1, 1919. Emergency declared.

Acts 1923, No. 302, § 2: effective 90 days after passage.

Acts 1925, No. 359, § 3: effective on passage.

Acts 1929, No. 129, § 9: Mar. 13, 1929. Emergency clause provided: "Due to the fact that many of the lands of this State have been forfeited for the nonpayment of taxes and have been certified to the State and dropped from the tax books of the respective counties, and experience has shown that such lands will not be bought under existing laws, now in order to augment the revenues of the State by encouraging the sale of such lands, an emergency is hereby declared to exist and this act shall be in full force and effect from and after its passage and approval."

Acts 1943, No. 282, § 3: Mar. 23, 1943. Emergency clause provided: "It being desirable that forfeited lands be as speedily restored to taxation as is practicable and fair, in order that the revenues of the several towns, cities, counties and the State may be increased and immediate relief given those thereto entitled, an emergency is found and is hereby declared to exist, and this Act being necessary for the preservation of the public peace, health, and safety, shall take effect and be in full force from and after its passage and approval."

Acts 1993, No. 791, § 10: Mar. 30, 1993. Emergency clause provided: "It is hereby found and determined by the General Assembly that the laws relating to the collection, redemption and sale of tax delinquent real property are in need of clarification; that Arkansas Courts have repeatedly voided tax deeds in instances where the county has not strictly complied with statutes; that such holdings have placed a cloud on tax deeds issued by the Commissioner of State Lands; that the present method whereby the Commissioner of State Lands disposes of tax delinquent land meets due process requirements; consequently, when the Commissioner of State Lands complies with the statutes set forth for his office to follow, tax deeds issued should not be void or voidable due to defects in the county procedure, except in cases where taxes have actually been paid. Further, the present situation has a chilling effect on the collection of taxes and encourages the nonpayment of taxes. Therefore, an emergency is hereby declared to exist and this

act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1993, No. 864, § 8: Apr. 2, 1993. Emergency clause provided: "It is hereby found and determined by the General Assembly that numerous tax delinquent severed mineral interests exist on the records of the Commissioner of State Lands office; that current laws requiring the sale of such severed mineral interests are not feasible; consequently, it is imperative that a procedure be established whereby the state can collect benefits from tax delinquent severed mineral interests. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the

public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1995, No. 714, § 7: Mar. 21, 1995. Emergency clause provided: "It is hereby found and determined by the General Assembly of the State of Arkansas that the laws relating to the forfeiture, sale and redemption of tax delinquent lands are in need of clarification and that this act would clarify certain problems that have arisen. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force from and after its passage and approval."

Acts 2003, No. 1376, § 4: January 1, 2004.

## RESEARCH REFERENCES

**Am. Jur.** 72 Am. Jur. 2d, State Tax., § 988 et seq.

**C.J.S.** 85 C.J.S., Tax., § 841 et seq.

## CASE NOTES

### ANALYSIS

In General.  
Construction.  
Right to Redeem.  
Time to Redeem.  
Unit Tax Ledger System.

### In General.

There can be no such thing as an innocent purchaser at a tax sale. *Bradbury v. Johnson*, 104 Ark. 108, 147 S.W. 865 (1912); *Schuman v. Westbrook*, 207 Ark. 495, 181 S.W.2d 470 (1944).

Where land included in tract forfeited for taxes had been assessed and taxes paid thereon for years thereafter, it was presumed that there was a redemption from the forfeiture. *Koonce v. Woods*, 211 Ark. 440, 201 S.W.2d 748 (1947).

### Construction.

Redemption laws must be liberally construed. *Little v. McGuire*, 113 Ark. 497, 168 S.W. 1084 (1914).

### Right to Redeem.

Attachment levied upon land that has been struck off to the state for nonpayment of taxes only binds such interest as the owner had at the time, which is a right

of redemption within two years. *Merrick & Fenno v. Hutt*, 15 Ark. 331 (1854) (decision under prior law).

Burden of proof rests upon person seeking to redeem to sustain his title. *Waterman v. Irby*, 76 Ark. 551, 89 S.W. 844 (1905).

Right to redeem from tax sale is conferred by statute and does not exist independently of it; therefore, statutory requirements must be substantially complied with by one who seeks to redeem. *Cook v. Jones*, 80 Ark. 43, 96 S.W. 620 (1906); *Nelson v. Pierce*, 119 Ark. 291, 177 S.W. 899 (1915).

Right to redeem from a tax sale is governed by statute in force and effect at time the sale was made. *Hoggs v. Nichols*, 134 Ark. 280, 204 S.W. 211 (1918).

Statutory right to redeem is self-executing and requires no judicial proceeding to make it effective. *George v. Hefley*, 182 Ark. 678, 32 S.W.2d 445 (1930).

Redemption right is available in all cases, not only where the sale was defective, but where it was perfectly regular and valid. *George v. Hefley*, 182 Ark. 678, 32 S.W.2d 445 (1930).

Right of redemption is not enlarged nor diminished by the fact that state has sold



and conveyed the interest acquired by it at tax sale. *Harris v. Harris*, 195 Ark. 184, 112 S.W.2d 40 (1938).

Redemption provisions require a cotenant who wishes any portion of a tract to redeem the entire tract where the taxes thereon have been assessed in solido. *Harris v. Harris*, 195 Ark. 184, 112 S.W.2d 40 (1938).

Right to redeem runs with the land, and any person who would otherwise acquire title takes with notice. *Koonce v. Woods*, 211 Ark. 440, 201 S.W.2d 748 (1947); *Rinke v. Schuman*, 246 Ark. 976, 440 S.W.2d 765 (1969).

#### **Time to Redeem.**

Where certificate of tax sale was assigned, tender of redemption money to assignee was good; but after expiration of the time prescribed by statute for redeeming, no waiver or anything short of an

acceptance of the redemption money would make it good. *Thweatt v. Black*, 30 Ark. 732 (1875) (decision under prior law).

Last day given for redemption of land sold for taxes is the second anniversary of the sale, with the sale day excluded from the computation. *Hare v. Carnall*, 39 Ark. 196 (1882).

Action to redeem property sold to the state for nonpayment of taxes is a proceeding to enforce a legal right, and the doctrine of laches, being a defense in equity, has no applicability. *Rinke v. Schuman*, 246 Ark. 976, 440 S.W.2d 765 (1969).

#### **Unit Tax Ledger System.**

In counties operating under the unit tax ledger system, the collector is substituted for the county clerk for purposes of redemption from delinquent tax sales. *Vanderbilt v. Washington*, 249 Ark. 1070, 463 S.W.2d 670 (1971).

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### **26-37-301. Notice to owner.**

(a)(1) After receiving tax-delinquent land, the Commissioner of State Lands shall notify the owner, at the owner's last known address as certified by the county, by certified mail, of the owner's right to redeem by paying all taxes, penalties, interest, and costs, including the cost of the notice.

(2) All interested parties shall receive notice of the sale from the Commissioner of State Lands in the same manner.

(3) If the notice by certified mail is returned unclaimed, the Commissioner of State Lands shall mail the notice to the owner or interested party by regular mail.

(4) If the notice by certified mail is returned undelivered for any other reason, the Commissioner of State Lands shall send a second notice to the owner or interested party at any additional address reasonably identifiable through the examination of the real property records properly filed and recorded in the office of the county recorder where the tax-delinquent land is located as follows:

(A) The address shown on the deed to the owner;

(B) The address shown on the deed, mortgage, assignment, or other filed and recorded document to the interested party; or

(C) Any other corrected or forwarding address on file with the county collector or county assessor.

(b) The notice to the owner or interested party shall also:

(1) Contain a partial or abbreviated legal description and the parcel number;

(2) State that the tax-delinquent land will be sold if not redeemed prior to the date of sale; and

(3)(A) Provide the sale date.

(B) The sale date shall be no earlier than one (1) year after the tax-delinquent land is certified to the Commissioner of State Lands.

(c) As used in this section, “owner” and “interested party” mean any person, firm, corporation, or partnership holding title to or an interest in the tax-delinquent land by virtue of a bona fide recorded instrument at the time of certification to the Commissioner of State Lands.

(d) The Commissioner of State Lands shall not be required to notify by certified mail or by any other means a person, firm, corporation, or partnership whose title to or interest in the tax-delinquent land is:

(1) Obtained after certification to the Commissioner of State Lands; or

(2) Expired or barred or was released or otherwise terminated before the date of sale regardless of whether a bona fide recorded instrument reflects the termination of the title or interest.

(e)(1) If the Commissioner of State Lands fails to receive proof that the notice sent by certified mail under this section was received by the owner of a homestead that is tax-delinquent land, then the Commissioner of State Lands or his or her designee shall provide actual notice to the owner of a homestead by personal service of process at least sixty (60) days before the date of sale.

(2) As used in this subsection:

(A) “Homestead” means a homestead as defined in § 26-26-1122; and

(B) “Owner of a homestead” means:

(i) Every owner if the homestead is owned by joint tenants; and

(ii) Either the husband or the wife if the homestead is owned by tenants by the entirety.

(3) The owner of a homestead that is tax-delinquent land shall pay for the additional cost of the notice by personal service of process under this subsection.

(f) The validity of a notice under this section may be challenged only by an owner or interested party of tax-delinquent land that did not receive notice in substantial compliance with this section.

**History.** Acts 1983, No. 626, § 1; A.S.A. 1947, § 84-1126; Acts 1987, No. 814, § 5; 1993, No. 791, § 5; 1995, No. 714, § 3; 2003, No. 1376, § 2; 2005, No. 1231, § 6; 2007, No. 706, § 4; 2007, No. 827, § 213; 2007, No. 1036, § 5; 2009, No. 655, § 5; 2011, No. 863, § 1.

**Amendments.** The 2009 amendment substituted “county recorder where” for “circuit clerk in the county wherein” in (a)(4), and made minor stylistic changes.

The 2011 amendment inserted present (b)(1) and (d)(2); and added (f).

## RESEARCH REFERENCES

**U. Ark. Little Rock L. Rev.** Notes, Property — Notice to Mortgagees in Tax Sales, 7 U. Ark. Little Rock L.J. 437.

Survey — Property, 10 U. Ark. Little Rock L.J. 605.

Survey of Legislation, 2003 Arkansas General Assembly, Taxation, Homestead Owner Redemption, 26 U. Ark. Little Rock L. Rev. 502.

Annual Survey of Caselaw, Tax Law, 26 U. Ark. Little Rock L. Rev. 975.

Note, Constitutional & Property Law — Fourteenth Amendment Due Process Clause & Notice to Be Heard — It Felt So Right But Was All So Wrong: United States Supreme Court Rules Arkansas's

Tax-Foreclosure Notice Procedure Fails to Satisfy Due Process Clause When Certified Mail Notice Returns "Unclaimed" (Jones v. Flowers, 547 U.S. 220, 126 S. Ct. 1708, 164 L. Ed. 2d 415, 2006 U.S. LEXIS 3451 (2006), 30 U. Ark. Little Rock L. Rev. 179.

## CASE NOTES

### ANALYSIS

Constitutionality.

Applicability.

Compliance.

Lack of Compliance.

Last Known Address.

Notice.

### Constitutionality.

This section fulfills constitutional due process requirements and provides sufficient notice to nonresident landowners prior to their property being sold. *Tsann Kuen Enters. Co. v. Campbell*, 355 Ark. 110, 129 S.W.3d 822 (2003).

### Applicability.

Actual personal service of notice under subdivision (e)(1) of this section was not required in a tax sale case in which there was no evidence that the property involved was a "homestead," as defined in § 26-26-1122(a)(1), and where a signed receipt, indicating that the notice was received, was returned to the commissioner. *Metro Empire Land Ass'n v. Arlands*, 2012 Ark. App. 350, — S.W.3d — (2012).

### Compliance.

Trial court properly found that a state land commissioner strictly complied with this section where the commissioner sent notice by certified mail to the taxpayers concerning the impending sale of their property for delinquent taxes; the statute does not require a state land commissioner to take every step possible to see that the letter arrives in the property owner's hands. *Jones v. Double "D" Props.*, 352 Ark. 39, 98 S.W.3d 405 (2003).

The Commissioner of State Lands provided adequate notice to a prior owner of a tax deficiency and tax sale where there was some confusion at the county level as to the last known address, the commissioner mailed the notice to the address

certified by the county, and the former owner had not furnished its correct address as required by § 26-35-705. *Mays v. St. Pat Props., LLC*, 357 Ark. 482, 182 S.W.3d 84 (2004), cert. denied, 543 U.S. 943, 125 S. Ct. 353, 160 L. Ed. 2d 255 (2004).

Tax commissioner strictly complies with this section when, prior to a tax sale, it sends notice by certified mail to the last known address of the property owner; moreover, this section does not require the commissioner to take every step possible to ensure that the notice arrives in the property owner's hand. *Jones v. Flowers*, 359 Ark. 443, 198 S.W.3d 520 (2004), rev'd, 547 U.S. 220, 126 S. Ct. 1708, 164 L. Ed. 2d 415 (2006).

Where state had attempted to provide the property owners and delinquent tax payers with notice, both via certified mail and through publication in the newspaper, it had complied with the provisions of this section and the tax sale was valid. *Jones v. Flowers*, 359 Ark. 443, 198 S.W.3d 520 (2004), rev'd, 547 U.S. 220, 126 S. Ct. 1708, 164 L. Ed. 2d 415 (2006).

Where tax notices sent to landowner contained the sale dates and the tracts offered for sale at public auctions on those dates, the requirements of this section were satisfied. *Price v. Rylwell, LLC*, 95 Ark. App. 228, 235 S.W.3d 908 (2006).

Although debtor did not receive notice of a purchase of property that was sold pursuant to a tax sale because the debtor was not on record as having an interest in the property, the debtor had established that she nevertheless had an equitable interest in the property because she was in possession of it, she claimed to have an oral rent-to-purchase agreement with the owner, and she had made improvements on the property. The debtor was thus entitled to challenge the transfer through a tax sale made to the purchaser. *In re Paro*, 362 B.R. 419 (Bankr. E.D. Ark. 2007).



Taxpayer's action to set aside a limited warranty deed and to quiet title in the taxpayer's name was properly dismissed because the Arkansas Commissioner of State Lands strictly complied with the notice requirements in subdivisions (a)(1) and (b) of this section, and the notice of a tax sale of the taxpayer's real property provided by the Commissioner met federal due process constraints. *Morris v. Landn-pulaski, LLC*, 2009 Ark. App. 356, 309 S.W.3d 212 (2009).

### **Lack of Compliance.**

Buyer's tax deed was properly voided because the Commissioner of State Lands failed to notify the bank as an interested party since it held a recorded interest in the property at the time of certification, and the right to challenge the tax sale based on the failure to give notice to the bank passed to the mortgagor when it acquired an interest in the property through the foreclosure sale. *RWR Props. v. Mid-State Trust VIII*, 102 Ark. App. 115, 282 S.W.3d 297 (2008), review denied, *RWR Props. v. Mid-State Trust VIII*, — Ark. —, — S.W.3d —, 2008 Ark. LEXIS 582 (Sept. 4, 2008).

### **Last Known Address.**

Where the Land Commissioner first sent certified notice to the wrong address, but then sent another certified notice to the correct address, the second notice satisfied the statutory notice requirement. *Wilson v. Daniels*, 64 Ark. App. 181, 980 S.W.2d 274 (1998).

### **Notice.**

Negotiated tax sale to the purchasers was not void for lack of notice to the mortgage holder where it had received actual notice of the negotiated sale, but had taken no action, and the lack of notice of a public tax sale did not deprive it of due process because a public sale had not taken place and as a result, no property interest was lost and no objections to such a sale were necessary. *Citifinancial Mortg. Co. v. Matthews*, 372 Ark. 167, 271 S.W.3d 501 (2008).

Trial court erred in awarding summary judgment to a lender in its foreclosure action against a buyer of property at a tax sale because there was no requirement under subdivision (a)(1) of this section that the lender receive actual notice of the tax sale; there was a question as to

whether the Arkansas Commissioner of State Lands was required to take any additional steps to provide the lender with notice. *Jarsew, LLC v. Green Tree Servicing, LLC*, 2009 Ark. App. 324, 308 S.W.3d 161 (2009).

Summary judgment was appropriate because there was no dispute that notice to the landowner of the pending tax sale was a single unclaimed letter sent by certified mail; some additional step reasonably calculated to give the landowner notice was required, and a mailing to the other landowners did not satisfy the requirements of due process. *RWR Props. v. Young*, 2009 Ark. App. 332, 308 S.W.3d 183 (2009).

Plain language of the statute only requires notice to a property owner "by certified mail." The statute does not require actual notice to the property owner. *Morris v. Landn-pulaski, LLC*, 2009 Ark. App. 356, 309 S.W.3d 212 (2009).

Trial court erred in dismissing a purchaser's petition to quiet title to property it bought at a tax sale because the notice of the tax sale the Commissioner of State Lands provided to the owners of the property complied with this section and with the Due Process Clause of the Fourteenth Amendment since the Commissioner sent the notice by certified mail, return receipt requested, and because the receipt was signed and returned, the Commissioner was not aware that the notice had failed; the address was correct, the return receipt was returned to the Commissioner with a signature, and no additional steps were required to satisfy due process. *Esterosto, LLC v. Kinsey*, 2010 Ark. App. 429, — S.W.3d — (2010).

Due Process Clause of the Fourteenth Amendment does not requires the Commissioner of State Lands to investigate every signature to insure it is in fact the signature of the property owner because actual notice is not required and the failure of notice in a specific case does not establish the inadequacy of the attempted notice; as long as the Commissioner performed as required by the statute and the statutorily prescribed notice complied with due process, that is, the notice was reasonably calculated to reach the intended recipient, it has done enough. *Esterosto, LLC v. Kinsey*, 2010 Ark. App. 429, — S.W.3d — (2010).

After the initial notice to the owner of mineral rights of a tax deficiency sale and redemption rights was returned due to an incorrect address, the Commissioner of State Lands follow up, with only one reasonable additional step to try to provide notice, was not sufficient to meet due process requirements even though it complied with state law. *Linn Farms & Timber Ltd. P'ship v. Union Pac. R.R.*, 661 F.3d 354 (8th Cir. 2011).

Actual personal service of notice of the right to redeem property sold at a tax sale

under subdivision (a)(1) of this section was not required. The commissioner of state lands sent notices by certified mail to the owner and its representative at their business address; these notices were returned, but the commissioner then sent notice to the current residents of the property, and a receipt for this notice was received, albeit with an illegible signature. *Metro Empire Land Ass'n v. Arlands*, 2012 Ark. App. 350, — S.W.3d — (2012).

**Cited:** *Bill's Printing, Inc. v. Carder*, 82 Ark. App. 466, 120 S.W.3d 611 (2003).

### 26-37-302. Payment required.

(a) To redeem tax-delinquent land with the county collector or the Commissioner of State Lands and to purchase tax-delinquent land at the Commissioner of State Land's sale the redeemer or purchaser of tax-delinquent land shall pay all delinquent taxes, plus:

- (1) Ten percent (10%) simple interest for each year of delinquency;
- (2) A ten percent (10%) penalty for each year of the delinquency; and
- (3) The costs incurred by the county and the Commissioner of State Lands.

(b) The penalties and interest shall accrue beginning on October 11 in the year of delinquency.

(c) Payment to redeem tax-delinquent land under this section shall be made by cash or cashier's check if the redemption occurs:

- (1) Within sixty (60) days before the date of the scheduled sale; or
- (2) During the redemption period following the sale.

**History.** Acts 1983, No. 626, § 1; A.S.A. 1947, § 84-1126; Acts 1987, No. 814, § 5; 2011, No. 864, § 1.

**Amendments.** The 2011 amendment, in the introductory language of (a), in-

serted "tax-delinquent land" in two places and substituted "Commissioner of State Lands" for "Commissioner's"; and added (c).

### RESEARCH REFERENCES

**U. Ark. Little Rock L.J.** Survey — Property, 10 U. Ark. Little Rock L.J. 605.

### 26-37-303. Redemption deed.

(a) If the owner redeems the tax-delinquent land, the Commissioner of State Lands shall issue a redemption deed and record it in the county wherein the land is located.

(b) The fee for the redemption deed and the fee for recording the deed shall be borne by the owner.

**History.** Acts 1983, No. 626, § 1; A.S.A. 1947, § 84-1126; Acts 1987, No. 814, § 5.

## RESEARCH REFERENCES

U. Ark. Little Rock L.J. Survey —  
Property, 10 U. Ark. Little Rock L.J. 605.

## CASE NOTES

**Bona Fide Purchasers.**

Party claiming bona fide purchaser status is not obliged to make inquiry into the circumstances surrounding the legal le-

gitimacy of a cancellation deed or redemption deed issued by the Commissioner of State Lands. *Bill's Printing, Inc. v. Carder*, 357 Ark. 242, 161 S.W.3d 803 (2004).

**26-37-304. [Repealed.]**

**Publisher's Notes.** This section, concerning timber rights, was repealed by Acts 1993, No. 791, § 6. The section was

derived from Acts 1905, No. 303, § 3, p. 738; C. & M. Dig., § 10097; Pope's Dig., § 13861; A.S.A. 1947, § 84-1202.

**26-37-305. Rights of persons under disability.**

(a) All land or a city lot or town lot belonging to an insane person, minor person, or person in confinement that is sold for taxes may be redeemed within two (2) years after the expiration of the person's disability.

(b)(1) In redemption of any land described in subsection (a) of this section by any person after the expiration of a disability described in subsection (a) of this section, the purchaser shall be required to account for all timber, gas, oil, or mineral substance taken from the land while holding under the tax title and protect the rights of any person under disability as provided in this section.

(2)(A) A person desiring to take any timber, gas, oil, or mineral substance from any land held under tax title within ten (10) years after the sale for taxes shall first execute a bond in sufficient amount to cover the substance to be removed, with good and sufficient sureties, conditioned that the holder of the land will pay for all substances removed from the land if the land is redeemed under the provisions of this section.

(B) The bond shall be filed with and approved by the county clerk in the county where the land is located.

(c)(1) Any person removing timber, gas, oil, or a mineral substance from any land contrary to the provisions of this section and without first executing the bond provided for in this section shall be guilty of a violation and shall be fined in any sum not less than twenty-five dollars (\$25.00) and not more than double the amount of the substance removed.

(2) A person may remove timber from land cleared in good faith for cultivation without becoming liable to the penalty provided in this section.

(d)(1) The county clerk shall keep a record of all certificates of redemption of lands or city lots or town lots, or parts of lands or city lots or town lots, which were sold for delinquent taxes and redeemed and



shall retain the record of them for ten (10) years from the date on which the redemption certificates were issued.

(2) Thereafter, unless a court order shall have been issued with respect to any such redemption certificate, the county clerk may destroy the record.

**History.** Acts 1883, No. 114, § 136, p. 199; C. & M. Dig., § 10096; Acts 1923, No. 302, § 1; Pope's Dig., § 13860; Acts 1967,

No. 428, § 1; A.S.A. 1947, § 84-1201; Acts 2005, No. 1994, § 170.

## CASE NOTES

### ANALYSIS

In General.  
Construction.  
Insane Persons.  
Minors.

#### In General.

Under the Overdue Tax Act of March 12, 1881 (Acts 1881, No. 39), allowing two years for redemption, no exception was made in favor of infants or other persons under disability. *Junction v. Burke*, 53 Ark. 430, 14 S.W. 622 (1890) (decision under prior law).

Under §§ 18-60-212 and 18-61-106, which provide that to recover land from a tax purchaser under a donation deed it must appear that the plaintiff was seized within two years next before the commencement of the suit, no exception can be made by a court in favor of infants or other persons under disability. *Sims v. Camby*, 53 Ark. 418, 14 S.W. 623 (1890).

Married women were limited to two years in which to redeem. *Sibly v. Cason*, 86 Ark. 32, 109 S.W. 1007 (1908) (decision prior to enactment of § 9-11-502).

Right of persons under disability to redeem is not a mere personal privilege to be enjoyed solely by those laboring under the disabilities mentioned in this section, which ceases with the death of such persons, but is a right which inheres in the land itself. *Pulaski County v. Hill*, 97 Ark. 450, 134 S.W. 973 (1911).

Persons under disabilities may redeem land from a tax sale, and in doing so, these persons not only redeem the land for themselves, but for all interested cotenants, although the individual redeeming would not acquire full title to the land. *Mitchell v. Chester*, 208 Ark. 781, 187 S.W.2d 899, 159 A.L.R. 1462 (1945); *Wil-*

*liams v. Jones*, 239 Ark. 1032, 396 S.W.2d 286 (1965).

As to effect of this section on requirement in security instruments that debtor pay all taxes when due, see *Mahan v. Poling*, 2 Ark. App. 1, 616 S.W.2d 20 (1981).

#### Construction.

This section must be read in connection with other statutes prescribing conditions under which the right to redeem may be exercised. *Harris v. Harris*, 195 Ark. 184, 112 S.W.2d 40 (1938).

#### Insane Persons.

Insane person whose interest in land is that of a cestui que trust has no legal title to land, and any redemption right is lost when the redemption right of the trustee expires. *Little v. McGuire*, 113 Ark. 497, 168 S.W. 1084 (1914).

Rights of insane person to redeem land held saved by § 16-56-116. *Schuman v. Westbrook*, 207 Ark. 495, 181 S.W.2d 470 (1944).

Insane person has two years after the removal of his disability to exercise his right of redemption and his heirs had the right to redeem within two years after his disability was removed by death, but they could not attach the disability of minority to that of their father and thereby extend the statute. *Tarrence v. Berg*, 202 Ark. 452, 150 S.W.2d 753 (1941).

In suit for redemption by insane person, court has authority to determine mental status irrespective of any previous adjudication of another court. *Schuman v. Westbrook*, 207 Ark. 495, 181 S.W.2d 470 (1944).

Right of insane person to redeem his property from a tax sale is not lost by lapse of statutory time for redemption. *Schuman v. Westbrook*, 207 Ark. 495, 181 S.W.2d 470 (1944).

Right of redemption in persons removed from disability of insanity is an absolute right and a statutory privilege, and it is not barred by limitations or adverse possession, nor is laches applicable. *Rinke v. Schuman*, 246 Ark. 976, 440 S.W.2d 765 (1969).

Statutory period within which a person removed from mental disability may redeem land sold to the state for nonpayment of taxes does not begin to run when a guardian is appointed for that person, as the right is a personal one in favor of the former incompetent. *Rinke v. Schuman*, 246 Ark. 976, 440 S.W.2d 765 (1969).

Right of redemption given to persons removed from disability of insanity is not an interest or estate in land, but is a statutory privilege to defeat a tax title within the time limited and is not enlarged or diminished by the fact that the state may have sold and conveyed the interest acquired by it at a tax sale. *Rinke v. Schuman*, 246 Ark. 976, 440 S.W.2d 765 (1969).

Right of persons removed from disability of insanity to redeem lands sold for taxes is available in all cases, not only where tax sale from which redemption is sought is defective, but from sales which are perfectly regular and valid. *Rinke v. Schuman*, 246 Ark. 976, 440 S.W.2d 765 (1969).

Heirs of incompetent have right to redeem land within statutory period, which begins to run after death of incompetent has removed disability of insanity. *Rinke v. Schuman*, 246 Ark. 976, 440 S.W.2d 765 (1969).

Acquisition of land by payment of taxes under color of title for more than seven years under § 18-11-102 does not bar redemption of land from void tax sale by heirs of incompetent. *Rinke v. Schuman*, 246 Ark. 976, 440 S.W.2d 765 (1969).

### Minors.

A minor can redeem from a tax sale at any time during his minority or for two years afterward, whether the purchase is by the state or by an individual, and alienation by the purchaser does not defeat the right. *Carroll v. Johnson*, 41 Ark. 59 (1883); *George v. Hefley*, 182 Ark. 678, 32 S.W.2d 445 (1930).

Where land of infant was forfeited to state and had been sold by state before time for redemption had expired, he could

redeem from purchaser, and redemption money belonged to purchaser and not to state. *Keith v. Freeman*, 43 Ark. 296 (1884).

Minor's right to redeem is not an estate, but only a statutory privilege to defeat a tax title in a limited time. *Bender v. Bean*, 52 Ark. 132, 12 S.W. 180 (1889), modified, 52 Ark. 146, 12 S.W. 241 (1889); *Harris v. Harris*, 195 Ark. 184, 112 S.W.2d 40 (1938).

Suit by infant to redeem land from tax sale is not an action for the recovery of land or for the possession thereof within §§ 18-60-212 and 18-61-106 requiring affidavit of tender of taxes. *Burgett v. McCray*, 61 Ark. 456, 33 S.W. 639 (1896).

Where law in force at date of tax forfeiture gives infant owner right to redeem until two years after he should come of age, this right cannot be divested by subsequent legislation. *Moore v. Irby*, 69 Ark. 102, 61 S.W. 371 (1901).

This section is notice to all the world of a minor's right to redeem. *Hisey v. Sloan*, 180 Ark. 797, 22 S.W.2d 1005 (1930).

It is the duty of those representing minors to raise their right to redeem, and where they fail to do so, it is the court's duty to protect their rights. *Hisey v. Sloan*, 180 Ark. 797, 22 S.W.2d 1005 (1930).

Where parent conveys land to minor children before tax sale, children have right to redeem, the lien for taxes having attached before the conveyance to the children being immaterial, since the right of redemption is from the time of sale. *Chambers v. Burke*, 194 Ark. 665, 109 S.W.2d 117 (1937).

Minor is entitled to redeem not only his interest, but the interest of all others by paying taxes, penalty, and costs, plus taxes subsequently paid by purchaser, interest on the whole amount, and value of improvements, if any. *Reynolds v. Plants*, 196 Ark. 116, 116 S.W.2d 350 (1938).

Two years after a person reaches majority, his right to redeem is waived. *Bass v. John*, 217 Ark. 487, 230 S.W.2d 946 (1950).

Sale of land to pay debts could not be set aside by minor entitled to redeem from tax sale under this section where sale was made subject to taxes and redemption under § 26-37-310 by purchaser did not purport to convey title. *Norwood v. Heaslett*, 218 Ark. 286, 235 S.W.2d 955 (1951).

Former § 26-38-118 (repealed), which allowed a period of one year to attack determination by chancery court vesting title in state for nonpayment of taxes, did not cut off rights of minor to redeem property from tax sale within period of two years following sale of property to state. *Harvey v. Ledbetter*, 219 Ark. 27, 240 S.W.2d 18 (1951) (decision under prior law).

Minor's suit to redeem is not barred by decree in favor of holder of tax title in ejectment suit against heirs, since only right to possession is involved. *Hunt v. Ellis*, 219 Ark. 353, 242 S.W.2d 146 (1951).

Minor's suit to redeem is not barred by decree in foreclosure suit by bank where bank refuses to accept deed, since debt has been paid. *Hunt v. Ellis*, 219 Ark. 353, 242 S.W.2d 146 (1951).

**Cited:** *Gulley v. Blake*, 214 Ark. 578, 217 S.W.2d 257 (1949); *Alsobrook v. Taylor*, 254 Ark. 132, 491 S.W.2d 808 (1973); *Eubanks v. Zimmerman*, 255 Ark. 53, 498 S.W.2d 655 (1973); *Trustees of First Baptist Church v. Ward*, 286 Ark. 238, 691 S.W.2d 151 (1985).

### **26-37-306. Procedure for redemption by persons under disability.**

(a) All lands and town or city lots, or parts thereof, which have been or may hereafter be forfeited to the state for nonpayment of taxes, which belong to minors, persons of unsound mind, and persons in confinement at the date of forfeiture, may be redeemed by such persons by application to the Commissioner of State Lands within the limitation prescribed by law and upon the terms and in the manner provided by law.

(b)(1) Persons of the class mentioned in subsection (a) of this section may, by themselves or by their guardians or next friend, present their petition to the Commissioner of State Lands, setting forth the evidence of their title at the date of forfeiture and their right to redeem under this section and the facts set forth shall be sworn to by the petitioner.

(2) The oath shall be attested by the clerk of the circuit court of the county, or some notary public of the county and state in which the petitioner resides or before the Commissioner of State Lands.

(c) The Commissioner of State Lands may require other evidence than the petition to establish the facts therein set forth, and the petitioner may take proof by affidavit or otherwise as the Commissioner of State Lands may prescribe.

(d)(1) If the Commissioner of State Lands finds the facts set forth in the petition to be true, he or she shall cancel the forfeiture on his or her books and issue his or her certificate to the party redeeming the land or lot, setting forth the fact that the land or lot has been duly and legally redeemed by the payment of all taxes, penalties, and costs due thereon.

(2) Upon the presentation of the certificate to the county clerk of the county in which the lands lie, the county clerk shall mark on his or her record of lands forfeited to the state opposite to the tract described in the certificate the words "redeemed before the Commissioner of State Lands" and the time when so redeemed.

(e) The assignees of the persons mentioned in subsection (a) of this section shall have two (2) years after they shall have acquired title to redeem the lands or town or city lots, and under the same provisions



and restrictions that their assignors had. In no case shall they have a longer time in which to redeem than the assignor had at the time of sale.

(f) The provisions of this section shall not apply to any land or town or city lots that have been in anywise disposed of by the state prior to the filing in the office of the Commissioner of State Lands a petition for redemption.

**History.** Acts 1877, No. 34, §§ 1-6, p. §§ 6696-6701; Pope's Dig., §§ 8666-8671; 29; 1879, No. 59, § 10, p. 70; C. & M. Dig., A.S.A. 1947, No. §§ 84-1211 — 84-1216.

### CASE NOTES

#### ANALYSIS

In General.  
Construction.  
Assignees.

#### In General.

No action of the state or its officers can destroy the statutory right of minors, or others under disability, to redeem. *Koonce v. Woods*, 211 Ark. 440, 201 S.W.2d 748 (1947).

#### Construction.

Right of minor to redeem his land from tax sale is absolute, and this section is to be liberally construed to effectuate its

purpose in preventing a permanent forfeiture of the estate of a minor. *Bradbury v. Johnson*, 104 Ark. 108, 147 S.W. 865 (1912).

#### Assignees.

Quitclaim grantee of owner of lands sold for delinquent taxes has the same right to redeem the lands so sold and to attack the tax title of the purchaser as has the original owner. *Vanderbilt v. Washington*, 249 Ark. 1070, 463 S.W.2d 670 (1971).

**Cited:** *Waldon v. Holland*, 206 Ark. 401, 175 S.W.2d 570 (1943); *Buschow Lumber Co. v. Witt*, 212 Ark. 995, 209 S.W.2d 464 (1948).

### 26-37-307. Joint tenant, tenant in common, or coparcener.

When any joint tenants, tenants in common, or coparceners shall be entitled to redeem any land or lot, or part thereof, sold for taxes and any person so entitled shall refuse or neglect to join in the application for the certificate of redemption, or from any cause cannot be joined in the application, the county clerk may entertain the application of any one (1) of these persons, or as many as shall join therein, and may make a certificate for the redemption of such portion of the land or lot, or part thereof, as the person making the application shall be entitled to redeem.

**History.** Acts 1883, No. 114, § 142, p. 199; C. & M. Dig., § 10103; Pope's Dig., § 13867; A.S.A. 1947, § 84-1208.

### CASE NOTES

#### Minors.

Minor cotenant of land sold for taxes may redeem entire interest in land, including interest owned by adult tenants in common, even though land does not con-

stitute a homestead; this section merely relieves a tenant in common of the necessity of redeeming for all. *Smith v. Pettus*, 205 Ark. 442, 169 S.W.2d 586 (1943).

**Cited:** *Goodrich v. Darr*, 161 Ark. 514,

256 S.W. 868 (1923).

### **26-37-308. Portion of tract of land.**

(a)(1) When a portion of a tract of land sold for general taxes or for any improvement district taxes extended by the county clerk on the county tax books is claimed by any person who desires to redeem the land, the person may apply to the county assessor setting forth in writing his or her claim to the land and demanding that the county assessor make a separate assessment upon the tract of land described by the claimant, showing what portion of the general taxes or of the local improvement taxes for which the land is forfeited is properly applicable to the portion of the land sought to be redeemed.

(2)(A)(i) Within two (2) weeks after the application is filed with the county assessor, the county assessor shall file with the county clerk a certificate in which he or she shall justly apportion the delinquent general or local improvement taxes between the portion of the land described in the demand of the complainant and the remaining portion of the land.

(ii) For the county assessor's services the claimant shall pay the county assessor the sum of one dollar (\$1.00).

(B) If the county assessor fails to file his or her certificate within the time prescribed he or she shall be subject to a penalty of twenty-five dollars (\$25.00).

(b)(1) The certificates shall be recorded by the county clerk in a book to be kept by him or her called the tax apportionment book, and the county clerk shall write opposite the description of the lands in the assessment books or local improvement assessment books the words, "See Tax Apportionment Book".

(2) For each case in which the county clerk fails to do so, the county clerk shall be subject to a penalty of twenty-five dollars (\$25.00).

(c)(1)(A) At any time before the expiration of the period for redemption of the land and upon paying to the proper officer the sum necessary to redeem the portion of land claimed by the person, any person interested in the land, either as the purchaser at the sale for general or local improvement taxes or claiming the remaining portion of the land, or any part of the land, may file suit in the circuit court to review the justness of the apportionment made by the county assessor.

(B) If the plaintiff prevails in his or her suit, the circuit court shall make a decree charging the land of the defendant with the excess of taxes paid by the plaintiff, which charge shall be the first lien on the land.

(2)(A) If the first redemption is made less than three (3) months before the expiration of the period of redemption, a remaining party interested in the land shall have a period of three (3) months from the time of the redemption in which to bring the suit provided for in this section.

(B) However, the three-month period shall not extend their time for redeeming.

(d)(1) The assessing officers of any improvement district may make a reassessment of the benefits annually.

(2) In any such reassessment the assessing officers may correct defective descriptions.

(3)(A) When a tract of land has been assessed as a whole, the tract may be divided according to its ownership at the time of the reassessment.

(B) This reassessment shall be made, advertised, and equalized in the same manner, and only subject to attack within the same period of time, as the original assessment of benefits.

**History.** Acts 1925, No. 359, § 1; Pope's Dig., § 13897; A.S.A. 1947, § 84-1209.

## CASE NOTES

### ANALYSIS

Constitutionality.  
Mineral Interests.

#### **Constitutionality.**

This section, directing an assessor, upon request, to segregate any part of a tract claimed by petitioner and to certify to the county clerk what part of the entire tax the designated portion shall bear, does not deny due process. *Foggs v. Crutcher*, 216 Ark. 438, 226 S.W.2d 48 (1950).

### **Mineral Interests.**

Title to mineral interest in land vested in levee district through purchase of land in foreclosure suits brought for the collection of delinquent levee assessments under Acts 1905, No. 106, where former owners, instead of applying for relief under this section, stood by for more than 10 years and permitted the land to be sold to the district and the period of redemption to expire. *Long Prairie Levee Dist. v. Wall*, 227 Ark. 305, 298 S.W.2d 52 (1957).

## **26-37-309. Uncertified sales to state.**

(a) Any land sold to the state for the nonpayment of taxes since the year 1908 or thereafter, which sale has never been certified to the Commissioner of State Lands, may be redeemed by the person, firm, or corporation holding the lands under color of title by filing with the Commissioner of State Lands a certificate from the county clerk of the county in which the lands are situated, showing the sale of the land, the amount of taxes, penalty, and cost due thereon, if any, and the payment thereof and making a sworn statement in writing that he or she is the holder of the lands as aforesaid and entitled to redeem them.

(b) Upon compliance with subsection (a) of this section, the Commissioner of State Lands shall issue to the person, firm, or corporation a quitclaim deed to the land, conveying to the person, firm, or corporation, as the case may be, all claim, right, and title the state acquired by the sale. The Commissioner of State Lands shall make a record of the sale and of the issuance of the deed in a book kept by him or her for that purpose, showing the sale to the state, the date of the deed, to whom issued, and the description of the lands. The Commissioner of State Lands shall file and preserve all of the original papers in connection



with the redemption in his or her office. The papers and record shall be open at all times to public inspection.

**History.** Acts 1919, No. 142, §§ 2, 3; C. & M. Dig., §§ 10106, 10107; Pope's Dig., §§ 8758, 8759, 13870, 13871; A.S.A. 1947, §§ 84-1217, 84-1218.

**Cross References.** Uncertified sales prior to 1908 canceled, § 26-38-102.

### **26-37-310. Procedure for redeeming land certified to state.**

(a) All lands or town and city lots sold to the state under any decree or other proceedings had under the provisions of an act entitled "An act to enforce the payment of overdue taxes," Acts 1881, No. 39, approved March 12, 1881 [repealed], and now owned by the state and all lands or town and city lots forfeited and sold to the state for nonpayment of taxes and certified to the Commissioner of State Lands which have not been sold or otherwise disposed of by the state, or which may hereafter be sold and forfeited to the state, and certified as aforesaid, may, until disposed of by the state, be redeemed by the person owning the land or lot at the time of forfeiture, or by his or her heirs or assigns, in the manner provided by subsections (b), (c), and (d) of this section.

(b) Any person, or his or her agent or attorney, desiring to redeem any land or town or city lots under the provisions of this section shall first pay to the Treasurer of State an amount or sum of money equal to the taxes for which the land or town or city lots desired to be redeemed were sold, together with penalties and costs and all expenses paid by the state in acquiring title to the land or town or city lots under such forfeiture for taxes and all state and county taxes that would have subsequently accrued thereon had they remained on the tax books subject to taxation.

(c) The Commissioner of State Lands, upon application by any person desiring to redeem any lands or town or city lots under this section, shall furnish the person a statement, showing the amount of money that will be required to be paid to the Treasurer of State under subsection (b) of this section for the redemption of the lands or town or city lots sought to be redeemed.

(d) Before any person shall be permitted to redeem any lands or town or city lots mentioned in subsection (a) of this section, the person, or his or her agent or attorney, shall present and file with the Commissioner of State Lands a verified petition stating that they, or the parties under whom they hold, owned the lands or town or city lots desired to be redeemed at the time they were forfeited for taxes. They shall also file with the petition a receipt, in duplicate, from the Treasurer of State showing the payment of the amount of money necessary to redeem the lands or town or city lots sought to be redeemed as required by subsection (b) of this section.

(e) The Commissioner of State Lands may require other evidence than the petition to establish the facts therein set forth, and the petitioner may take proof by affidavit or otherwise as the Commissioner of State Lands may direct.

(f) If the Commissioner of State Lands finds the facts set forth in the petition to be true and that the amount of money necessary to redeem the lands sought to be redeemed has been paid to the Treasurer of State as required by subsection (b) of this section, he or she shall, by deed of release and quitclaim under his or her hand and official seal, convey to the person redeeming the lands or town or city lots all of the right, title, and interest of the state in and to the lands or town or city lots acquired under any forfeiture, sale, or condemnation for taxes. For this deed, the Commissioner of State Lands shall receive one dollar (\$1.00), to be paid by the party applying to redeem the lands or lots.

(g) The Commissioner of State Lands shall file with the Auditor of State one (1) of the receipts executed by the Treasurer of State and presented with the petition required by subsection (d) of this section and shall keep the other receipt on file in his or her office. The Commissioner of State Lands shall forward a copy of the deed executed by him or her under subsection (f) of this section to the county clerk of the county in which the land or lot conveyed by the deed is situated.

(h) After the reception of the deed of the Commissioner of State Lands, the county clerk shall extend on the tax book against the land or lot the taxes other than state and county for the years that the taxes have not been paid since the sale of the land or lot to the state, and these taxes shall be charged and collected as other taxes.

(i) The proceeds of all redemptions of forfeited lands which may hereafter be made under subsections (a)-(e) of this section shall be divided equally between the county where the lands are situated and the state, and paid over in the manner as required and provided in this section.

**History.** Acts 1891, No. 151, §§ 1-8, p. 257; 1893, No. 96, §§ 1, 3, p. 35; 1895, No. 31, § 1, p. 35; C. & M. Dig., §§ 6741-6748; Acts 1929, No. 129, § 8; Pope's Dig., §§ 8672-8679; A.S.A. 1947, §§ 84-1219 — 84-1227.

**Cross References.** Deed fees, § 21-6-203.

Release of overdue tax lands sold to state under Act of 1881, § 26-38-103.

## CASE NOTES

### ANALYSIS

Disposition by State.  
Overdue Tax Act of 1881.  
Redemption of Lands.

### Disposition by State.

Execution of donation certificate of tax forfeited lands to donee is a disposition of the land within the meaning of this section giving the owner right to redeem lands that have not been sold or otherwise disposed of by the state. *Waldon v. Holland*, 206 Ark. 401, 175 S.W.2d 570 (1943).

Where, at the time donation certificate was issued by state to donee, there was no law in existence that gave landowner any further right to redeem, subsequently enacted statute, providing that no pending donation shall bar redemption and remitting donee to courts for enforcement of any rights as to property because of betterments, impaired donee's right under the contract. *Waldon v. Holland*, 206 Ark. 401, 175 S.W.2d 570 (1943).

Law in force at the time concerning redemption also becomes a part of the contract as to a donation deed by state, as

that law measures the respective rights. *Waldon v. Holland*, 206 Ark. 401, 175 S.W.2d 570 (1943).

Commissioner of State Lands had authority to cancel redemption deed issued to grantee because of worthless checks given by grantee in payment for deed, and subsequent sale of the lands to another person conveyed all title and interest of the state to that person. *Field v. Brown*, 206 Ark. 545, 176 S.W.2d 155 (1943).

Where state conveyed property to husband and wife and property was previously owned by husband and forfeited to state for nonpayment of taxes, it was a sale that vested the property in the husband and wife as tenants by the entirety and was not a redemption of tax forfeited lands; so that, upon husband's death, ownership vested in wife and, upon her death, intestate title passed to her heirs at law. *Herford v. Scales*, 240 Ark. 436, 399 S.W.2d 653 (1966).

#### **Overdue Tax Act of 1881.**

Where, after proper redemption of land that had been sold under Overdue Tax Act of 1881 (Acts 1881, No. 39), sale was confirmed, deed was executed, and writ of possession ordered in favor of purchaser, confirmation could be set aside and writ of possession quashed. *Adair v. Scott*, 53 Ark. 480, 14 S.W. 671 (1890) (decision under prior law).

Where land was forfeited to state under Overdue Tax Act of 1881 (Acts 1881, No. 39) after lands were returned delinquent, conveyance by state could not be attacked after confirmation of sale, although collector's books showed tax had been paid. *Jefferson Land Co. v. Grace*, 57 Ark. 423, 21 S.W. 877 (1893) (decision under prior law).

Questions relating to regularity of assessment of lands for taxation, amount of taxes assessed against them, and payment thereof were concluded by decree of confirmation of lands in Overdue Tax Act of 1881 (Acts 1881, No. 39) suit. *Streett v. Reynolds*, 63 Ark. 1, 38 S.W. 150 (1896) (decision under prior law).

During pendency of Overdue Tax Act of 1881 (Acts 1881, No. 39) suit to set aside

forfeiture of certain land for taxes, Commissioner of State Lands had no authority to issue donation certificate and deed based upon the forfeiture. *St. Louis Refrigerator & Wooden Gutter Co. v. Langley*, 66 Ark. 48, 51 S.W. 68 (1898) (decision under prior law).

Where lands were sold to state and conveyed under Overdue Tax Act of 1881 (Acts 1881, No. 39), but for years thereafter the state, through its county officers, assessed, levied, and collected taxes on these lands in the names of the original owners and their successors, it would be presumed that these lands had been redeemed from the Commissioner of State Lands by the original owners. *Wallace v. Hill*, 135 Ark. 353, 205 S.W. 699 (1918) (decision under prior law).

Where land was sold to state under Overdue Tax Act of 1881 (Acts 1881, No. 39), and was not redeemed within time allowed, person who was remote grantee of tax purchaser acquired a valid title. *Chicago Land & Timber Co. v. Dorris*, 139 Ark. 333, 213 S.W. 759 (1919) (decision under prior law).

#### **Redemption of Lands.**

Fact that Commissioner of State Lands permitted one to redeem land claimed by him from a tax sale cannot be held to be an adjudication of his ownership of the land in litigation with another person. *Meyer v. Snell*, 89 Ark. 298, 116 S.W. 208 (1909).

Redemption of land by owner from tax forfeiture, made after forfeited land has been sold by state, held merely a payment of taxes and not color of title. *Pyburn v. Campbell*, 158 Ark. 321, 250 S.W. 15 (1923).

Provisions that permitted state to retain all moneys paid for redemption held not subject to constitutional prohibition that no money arising from a tax levied for one purpose shall be used for any other purpose. *Page v. McQuin*, 201 Ark. 890, 148 S.W.2d 308 (1941).

**Cited:** *Field v. Brown*, 206 Ark. 545, 176 S.W.2d 155 (1943); *Buschow Lumber Co. v. Witt*, 212 Ark. 995, 209 S.W.2d 464 (1948).



**26-37-311. Proceedings to redeem prior to sale by state.**

(a) At any time before the lands referred to in this section have been sold by the state, the owners thereof may present their petition to the Commissioner of State Lands, setting forth the evidence of their title, or of those under whom they claim, to the lands, at the time of the sale of the lands to the state as stated in this section. The petition shall set forth the evidence of the taxes having been paid on the lands before such sale to the state, for the years for the alleged nonpayment of which taxes the lands were sold to the state under any proceedings or decrees rendered under laws to enforce the payment of overdue taxes, and the facts set forth shall be sworn to by the petitioner and such oath shall be attested by the clerk of the circuit court of the county, or some notary public of the county and state in which such petitioner resides, or before the Commissioner of State Lands.

(b) The Commissioner of State Lands may require other evidence than the petition to establish the facts therein set forth, and the petitioner may take proof by affidavit or otherwise as the Commissioner of State Lands may prescribe.

(c) If the Commissioner of State Lands finds the facts set forth in the petition to be true and that the taxes on the lands had been paid by the present owners of the lands, or by those under whom they claim the lands, for the years they were sold to the state, and before they were sold to the state, he or she shall, by deed of release and quitclaim under his or her hand and official seal, convey to the owner of the lands all of the rights, title, and interest of the state in and to the lands acquired under any sale or other proceedings under provisions of an act to enforce the payment of overdue taxes, Acts 1881, No. 39, approved March 12, 1881 [repealed]. A copy of the deed shall also be sent by the Commissioner of State Lands to the county clerk of the county.

(d) After the reception of the deed from the Commissioner of State Lands to the county clerk, the county clerk shall extend on the tax books against the lands the taxes for the years that the taxes have not been paid since the erroneous sale of the lands to the state under the overdue tax law. The taxes that have not been paid on the lands since the sale to the state shall be charged and collected as in other cases of lands of the state where the Commissioner of State Lands has officially advised the county clerk they have become subject to taxation.

**History.** Acts 1887, No. 13, §§ 1-4, p. Dig., §§ 8680-8683; A.S.A. 1947, §§ 84-13; C. & M. Dig., §§ 6749-6752; Pope's 1228 — 84-1231.

**CASE NOTES**

**Cited:** *Buschow Lumber Co. v. Witt*, 212 Ark. 995, 209 S.W.2d 464 (1948).

**26-37-312. Reassessment of unimproved land in municipality.**

(a) When an acreage tract of unimproved land, that is, land with no residence or other building on it, located in any incorporated municipality is in default to this state for nonpayment of taxes and when the owner of the acreage tract of unimproved land applies to the county assessor of the county where the acreage tract of unimproved land is located for reassessment, it shall be the duty of the county assessor to determine what would have been a fair assessment for the year for which the acreage tract of unimproved land forfeited.

(b)(1) In determining the amount at which the acreage tract of unimproved land should have been assessed, the county assessor should take into consideration how the acreage tract of unimproved land lies.

(2) If the value of the acreage tract of unimproved land is being considered as to its probability or possibility of being platted and sold off in lots or blocks, then due allowance should be made for the land that will be required for streets and alleys.

(3) In arriving at the valuation for reassessment purposes on the acreage tract of unimproved land, the county assessor shall take into consideration the assessed value of platted vacant lots in adjoining or nearby platted subdivisions.

(4) If the property that is platted into lots is served with water, lights, gas, and telephone lines, when there is no improvement district tax on the platted lots for those utility services, then that also should be taken into consideration.

(5) When compared with platted lots, if the streets serving the lots are paved and the paving tax is paid out, or nearly paid out, that, likewise, should be taken into consideration in determining the amount at which the acreage tract of unimproved land should have been assessed.

(c)(1)(A) If the county assessor finds that the acreage tract of unimproved land was valued on county assessor's records too high at the time it forfeited to the state, the county assessor shall make a written report to that effect to the Commissioner of State Lands and state what a fair and equitable assessed value should have been.

(B) It shall then be the duty of the Commissioner of State Lands to make reduction in the amount of taxes in accordance with the report of the county assessor.

(2) Any interested landowner may appeal to the circuit court for review of the findings of the county assessor.

(d)(1) If reduction in the amount of taxes against the acreage tract of unimproved land is made by the Commissioner of State Lands on the report of the county assessor or upon finding of the circuit court upon appeal from the county assessor's findings, then the Commissioner of State Lands shall allow the landowner to redeem the acreage tract of unimproved land or sell the acreage tract of unimproved land as provided by law, based on the corrected amount of taxes due.

(2) When the acreage tract of unimproved land, at the time it forfeited to the state for taxes, was assessed as one (1) tract but when it is now owned by two (2) or more owners, on petition to the Commissioner of State Lands of one (1) or more of the landowners, as shown by certificate of abstractor, the Commissioner of State Lands shall prorate the proportionate part of the reassessment against the respective parts of the acreage tract of unimproved land and the Commissioner of State Lands shall determine the amount of delinquent taxes to be charged against each part of the acreage tract of unimproved land and mark his or her records accordingly.

(3) Each part of the acreage tract of unimproved land may then be redeemed by the owner, the amount necessary to redeem being based on the corrected assessment and apportionment.

(4) If any portion of the acreage tract of unimproved land remains unredeemed for a period of ninety (90) days after the apportionment is made, the Commissioner of State Lands may then sell any portion of the acreage tract of unimproved land as remains unredeemed, or may sell the portion prior to the expiration of the ninety-day period with the consent of the owner.

**History.** Acts 1941, No. 437, § 2; A.S.A. 1947, § 84-1232.

### **26-37-313. Reassessment of parcels of land upon depreciation since forfeiture.**

(a)(1) Town and city lots and blocks and acreage tracts, lots, blocks, divisions, and subdivisions that have been platted and sold as being outside of the corporate limits of towns and cities, and rural lots and parcels of land now, or which may hereafter be, forfeited to the state for nonpayment of taxes due thereon that have depreciated in value since forfeiture may be reassessed at their present value by the county assessor of the county in which the lands are located, upon application being made in writing by the application to redeem or purchase them, setting forth the reasons for the reassessment. No application shall contain more than five (5) descriptive calls. Before any such reassessment shall be valid, it shall be presented to the county judge and the chief county school officer of the county in which the lands are located and approved by them in writing and made a matter of record in the county by the county clerk.

(2) The fee of the county assessor shall be one dollar (\$1.00) for each application. The fee shall be paid to the county treasurer and credited by him or her to the county general revenue fund. The fee of the county clerk shall be the regular fee allowed by law and shall be paid by the applicant seeking reassessment.

(b)(1) If the county assessor deems the assessment for which parcels of land were forfeited to be too high, he or she shall prepare a certificate stating that a reassessment has been made under this section and shall



state, under oath, the cause for the depreciation in the value of the lots or parcels of land.

(2) The county assessor, the county judge, and the chief county school officer are prohibited from making any such reassessment as set out in this section except for the following causes:

(A) Burned buildings not replaced and on which the applicant did not collect insurance;

(B) Buildings removed and from which the applicant received no benefit;

(C) Erosion;

(D) Damage by flood;

(E) Damage by tornado;

(F) Removal of timber from which the applicant received no benefit; or

(G) Any act of God.

(3) When the reassessment has been made, a complete record thereof, including a certified copy of the application, the reassessment, and the court order, shall be forwarded to the Commissioner of State Lands, who shall, upon its receipt, enter it upon a record to be kept by him or her in his or her office for that purpose, and he or she shall issue redemption deeds or sale deeds for forfeited lands in the manner and form provided by law, based upon the reassessment value.

**History.** Acts 1939, No. 282, §§ 1, 2; 1943, No. 282, §§ 1-3; A.S.A. 1947, §§ 84-1233, 84-1234.

**Publisher's Notes.** Acts 1939, No. 282, § 3 and 1943, No. 282, § 4, providing for a penalty for charging excessive fees or accepting money for reassessment were repealed by Acts 1975, No. 928, § 4, effective January 1, 1976; however, Acts 1975, No. 928, § 2, provided that, notwithstanding

that all or part of a statute defining a criminal offense is amended or repealed by this act, the statute or part thereof so amended or repealed shall remain in force for the purpose of authorizing the prosecution, correction, and punishment of a person committing an offense under the statute or part thereof prior to the effective date of this act.

### CASE NOTES

**Cited:** Buschow Lumber Co. v. Witt, 212 Ark. 995, 209 S.W.2d 464 (1948).

### 26-37-314. Sale of tax-delinquent severed mineral interests prohibited.

(a)(1) When severed mineral interests are forfeited to the state and conveyed by certification to the Commissioner of State Lands for nonpayment of property taxes, title to the severed mineral interests shall vest in the State of Arkansas in the care of the Commissioner of State Lands.

(2) The Commissioner of State Lands shall so notify the owner of record by certified mail at his or her last known address.

(3)(A) Except as provided in subsection (b) of this section, the Commissioner of State Lands shall not sell the severed mineral

interests but shall retain the severed mineral interests indefinitely for redemption.

(B) However, the severed mineral interests may be leased by the Commissioner of State Lands if he or she determines that a lease is in the best interest of the state.

(C) All benefits, including royalty and leasehold payments, accruing after title vests in the state and before redemption shall be payable to the Commissioner of State Lands.

(D) Upon receipt of any such benefits, the Commissioner of State Lands shall deposit the funds into financial institutions in this state.

(4)(A) The tax-delinquent severed mineral interests may be redeemed at any time in the manner prescribed for the redemption of tax-delinquent real property.

(B) However, upon redemption the owner shall not be entitled to any payments received by the Commissioner of State Lands before redemption.

(5) All funds derived from redemption shall be held in escrow by the Commissioner of State Lands for one (1) year, at which time they shall be distributed the same as funds derived from the redemption of real property.

(b)(1) After the expiration of the redemption period prescribed by this chapter, the Commissioner of State Lands shall sell the severed mineral interests to the surface owners if the surface owners opt to purchase the tax-delinquent severed mineral interests.

(2) The surface owner purchasing severed mineral interests under subdivision (b)(1) of this section shall be allowed to purchase the severed mineral interests for an amount equal to the delinquent taxes and shall not be required to pay any interest or penalties if the surface owner was not the owner of the severed mineral interests at the time the taxes became delinquent.

(c) All benefits, including royalty and leasehold payments, payable to the Commissioner of State Lands pursuant to this section are not subject to the provisions of § 18-28-201 et seq. and § 18-28-401 et seq.

(d) The provisions of this section shall be applicable to all tax-delinquent severed mineral interests currently forfeited to the state and certified to the Commissioner of State Lands as well as to all tax-delinquent severed mineral interests forfeited to the state in the future.

(e)(1) No deed issued under this section shall be void or voidable on the ground that the assessment of the property taxes on the severed mineral interests was not subjoined to the assessment of the property taxes on the surface realty.

(2) This subsection shall be retroactive to all certifications of delinquent severed mineral interests in the records of the office of the Commissioner of State Lands.

## RESEARCH REFERENCES

**U. Ark. Little Rock L. Rev.** Survey of Legislation, 2003 Arkansas General Assembly, Taxation, Severed Mineral Rights, 26 U. Ark. Little Rock L. Rev. 500.

Well, Now, Ain't That Just Fugacious!: A Basic Primer on Arkansas Oil and Gas Law, 29 U. Ark. Little Rock L. Rev. 211.

**26-37-315. Redemption of homestead by taxpayer.**

(a) As used in this section, "homestead" means the same as defined in § 26-26-1122.

(b) If a taxpayer did not receive actual notice of the sale of his or her homestead by the Commissioner of State Lands or his or her designee by personal service of process at least sixty (60) days before the date of the sale, then the taxpayer may redeem the tax-delinquent land by tendering all taxes, penalties, interests, and costs within thirty (30) days after the date of the sale.

**History.** Acts 2003, No. 1376, § 1; 2007, No. 827, § 214.

**26-37-316. Notice requirement.**

(a) As used in this section, "homestead" means the same as defined in § 26-26-1122.

(b) When a homestead is certified to the Commissioner of State Lands, the county collector shall provide notice to the Commissioner of State Lands that the tax-delinquent land is a homestead.

**History.** Acts 2003, No. 1376, § 3; 2007, No. 827, § 215.

## CHAPTER 38

## CONFIRMATION OF TAX SALES

## SUBCHAPTER.

1. GENERAL PROVISIONS.
2. TITLE TO FORFEITED LANDS.

**Cross References.** Confirmation of title by purchaser at tax sale, procedure, § 18-60-601 et seq.

Tax delinquent lands certified to the state for sale by commissioner of state lands, § 26-37-101 et seq.

**Preambles.** Acts 1883, No. 16 contained a preamble which read: "Whereas, In many cases, county clerks of different counties in this State have heretofore executed deeds for lands sold at delinquent tax sales, which said deeds are void by reason of showing upon their face that two

or more tracts of land were sold together, as recently decided by the Supreme Court of this State, when, in fact, said tracts were sold separately, as required by law at the time of the sale, and

"Whereas, It is unjust that the purchasers of said lands should suffer because of the misprision of said county clerks.

"Therefore...."

Acts 1941, No. 408 contained a preamble which read: "Whereas, Certain lands situate in the State of Arkansas were sold to the State of Arkansas under



the provisions of an act of the General Assembly of said State, entitled, 'An act to enforce the payment of overdue taxes,' approved March 12, 1881, and an act amendatory thereto, approved March 22, 1881; and,

"Whereas, the title to a large per cent, if not all, of said lands has been released by said State under various Acts of the General Assembly thereof, and;

"Whereas, practically all, if not all, of said lands have been placed back upon the tax books of the Counties wherein said lands lie for a great number of years and

taxes paid thereon by the respective owners and claimants thereof;

"Now, Therefore...."

**Effective Dates.** Acts 1883, No. 16, § 3: effective on passage.

Acts 1919, No. 142, § 4: approved Mar. 1, 1919. Emergency declared.

Acts 1921, No. 112, § 3: approved Feb. 11, 1921. Emergency clause provided: "This act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared, and it shall take effect from and after its passage."

## RESEARCH REFERENCES

**ALR.** Constitutionality, construction, and application of statute as to effect of taking appeal, or staying execution, on right to redeem from execution or judicial sale. 44 A.L.R.4th 1229.

Right of interested party receiving due notice of tax sale or of right to redeem to assert failure or insufficiency of notice to other interested party. 45 A.L.R.4th 447.

Easement or servitude or covenant as affected by sale for taxes. 7 A.L.R.5th 187.

**Am. Jur.** 47 Am. Jur. 2d Jud. Sales § 274.

72 Am. Jur. 2d, State Tax., § 973 et seq.

**Ark. L. Rev.** Bills to Remove Cloud on Title and Quieting Title, 6 Ark. L. Rev. 83.

A Commentary on State and Improvement District Tax Sales, 8 Ark. L. Rev. 386.

Tax Forfeiture Problems in the Examination of Abstracts, 12 Ark. L. Rev. 333.

Due Process: The Constitutional Requirements of Notice in Tax Sale Proceedings, 30 Ark. L. Rev. 73.

**C.J.S.** 85 C.J.S., Tax., § 895 et seq.

## SUBCHAPTER 1 — GENERAL PROVISIONS

### SECTION.

26-38-101. Uncertified sales to state prior to 1970 canceled.

26-38-102. Uncertified sales to state prior to 1908 canceled.

26-38-103. Release of overdue tax lands sold to state under Acts 1881, No. 39.

26-38-104. Execution of duplicate tax deeds.

### SECTION.

26-38-105. Reissuance of deed to show tracts sold separately.

26-38-106. Record of deeds made by county clerk.

26-38-107. Title claims adverse to tax title deeds.

26-38-108 — 26-38-123. [Repealed.]

26-38-124. [Repealed.]

**Effective Dates.** Acts 1883, No. 114, § 226: effective on passage.

**26-38-101. Uncertified sales to state prior to 1970 canceled.**

(a) All sales of lands to the state for nonpayment of taxes for the year 1970 and all years prior thereto, which have not been certified to the Commissioner of State Lands and respecting which sales there is no record in the office of the Commissioner of State Lands, are canceled. The state releases all of its right, title, or interest in and to:

(1) All lands sold to the state for nonpayment of taxes for the year 1970 and all years prior thereto, to which lands the Commissioner of State Lands has executed deeds in favor of the grantees in such deeds, their heirs, successors, and assigns; and

(2) All such lands as have not been disposed of by the Commissioner of State Lands as aforesaid, but which lands have been placed back on the tax books of the counties wherein the lands lie, and the taxes have been paid thereon for more than seven (7) years since they were sold to the state.

(b) The provisions of this section apply whether or not the lands were ever certified to the county clerk and whether or not the lands were certified by the county clerk to the Commissioner of State Lands.

**History.** Acts 1963, No. 126, § 1; A.S.A. 1947, § 84-1336; Acts 1997, No. 502, § 1.

**26-38-102. Uncertified sales to state prior to 1908 canceled.**

All sales of land to the State of Arkansas for the nonpayment of taxes for the year 1908 or prior thereto, which have not been certified to the Commissioner of State Lands and of which there is no record in the office of the Commissioner of State Lands, are canceled and set aside, and the state shall not have or assert any claim, right, or title to the lands, or any part thereof.

**History.** Acts 1919, No. 142, § 1; C. & M. Dig., § 10105; Pope's Dig., §§ 8757, 13869; A.S.A. 1947, § 84-1333.

**26-38-103. Release of overdue tax lands sold to state under Acts 1881, No. 39.**

(a) As to all lands in the State of Arkansas which were sold to the state under the provisions of an act to enforce the payment of overdue taxes, Acts 1881, No. 39, approved March 12, 1881 [repealed], and an act amendatory thereto, approved March 22, 1881, to which the Commissioner of State Lands has executed deeds of donation, deeds of sale, or deeds of relinquishment, the state does release its title in favor of the grantees in these deeds, their heirs, successors, and assigns forever. As to all these lands that have not been disposed of by the Commissioner of State Lands as indicated but which have been placed back upon the tax books of the counties wherein the lands lie, and the taxes have been paid thereon for more than seven (7) years since they were sold to the state under the provisions of these acts, the state does

release all of its title. These provisions apply whether the lands were certified by the commissioner of the court to the county clerk of the county, as required by these acts, or not, and also to apply whether the lands were certified by the county clerk to the Office of the Commissioner of State Lands, or not.

(b) Any person, firm, or corporation owning or claiming any of these lands may obtain evidence of his or her title thereto having been quieted under the provisions of this section by presenting to the Commissioner of State Lands a certificate under the hand and seal of the county clerk of the county wherein the lands lie, showing that he or she or his or her grantors, direct or by mesne conveyances, have paid the taxes on the lands for the number of years stated since sold to the State of Arkansas under the provisions of these acts of the General Assembly, accompanied by the affidavit of the claimant or his or her agent, showing that he or she is the present owner or claimant and has not sold or conveyed the lands to any other person, firm, or corporation. The certificate and affidavit being filed in the office of the Commissioner of State Lands, the Commissioner of State Lands shall execute a deed of relinquishment of all of the right, title, and interest of the state acquired under these acts to the claimant, or his or her successors and assigns, forever, upon the payment of a deed fee of one dollar (\$1.00).

**History.** Acts 1941, No. 408, §§ 1, 2; A.S.A. 1947, §§ 84-1334, 84-1335.

**Publisher's Notes.** Acts 1941, No. 408, § 3, provided for the repeal of all laws in conflict with this act and provided that this act was cumulative to all previous acts passed by the General Assembly.

For prior laws releasing overdue tax lands sold to state under Overdue Tax Act of 1881 (Acts 1881, No. 39), see Acts 1891, No. 68, § 1, and Acts 1895, No. 76, § 1.

**Cross References.** Procedure for redeeming land certified to state, § 26-37-310.

## 26-38-104. Execution of duplicate tax deeds.

(a)(1) The county clerks are authorized and empowered to execute duplicate tax deeds to land sold for delinquent taxes, to or in the name of the original grantee in any tax deed which has been lost, mislaid, or destroyed, upon the fact being shown to the county clerk.

(2)(A) If fully satisfied from the evidence of the existence and loss of the original deed, the county clerk shall, on written application for that purpose, proceed to make, execute, and deliver, to or in the name of the original grantee, a good and sufficient deed of conveyance for any such tract of land or lot.

(B) The deed shall be good and valid in law to all intents and purposes as if the original had not been mislaid, lost, or destroyed.

(b) The county clerks shall receive the sum of one dollar (\$1.00) as their fee for the execution of each duplicate deed, as provided in this section, from the person applying therefor.

**History.** Acts 1921, No. 112, §§ 1, 2; Pope's Dig., §§ 1654, 1655; A.S.A. 1947, §§ 84-1307, 84-1308.



**26-38-105. Reissuance of deed to show tracts sold separately.**

(a) Upon the presentation of any void tax deed, showing upon its face that two (2) or more tracts of land were sold together when in fact the tracts were sold separately, to the county clerk of the county in which the lands were sold for taxes and the county clerk being satisfied from the records of his or her office that the several tracts of land contained in the deed were sold separately, the county clerk shall file the void deed in his or her office and cancel it. The county clerk shall thereupon execute in lieu thereof a deed for the tracts of land, reciting the execution of the former deed, and the date thereof, the error therein, that each tract was sold separately, and the amount for which the land was sold, and, in all other respects, conform to the requirement of law.

(b) The deed when executed, as provided in subsection (a) of this section, shall relate back to the void deed and have the same force and effect, both in law and equity, as if executed on the same day.

**History.** Acts 1883, No. 16, §§ 1, 2, p. 14; C. & M. Dig., §§ 10121, 10122; Pope's Dig., §§ 13885, 13886; A.S.A. 1947, §§ 84-1309, 84-1310.

**CASE NOTES****Clerk's Records.**

Clerk can reform tax deed only when he is satisfied from records in his office that the several tracts of land in question were

sold separately. *Chatfield v. Iowa & Ark. Land Co.*, 88 Ark. 395, 114 S.W. 473 (1908).

**26-38-106. Record of deeds made by county clerk.**

The county clerk shall enter in a book to be kept in his or her office a minute of all deeds made by him or her for lands and lots, and parts thereof, sold for taxes, naming therein:

- (1) The person who stood charged with the taxes at the time of the sale;
- (2) The name of the purchaser;
- (3) A brief description of the land or lot, or part thereof, sold;
- (4) The quantity sold;
- (5) The name of the grantee in the deed; and
- (6) The date of the execution.

**History.** Acts 1883, No. 114, § 150, p. 199, C. & M. Dig., § 10115; Pope's Dig., § 13879; A.S.A. 1947, § 84-1311.

**26-38-107. Title claims adverse to tax title deeds.**

(a) Under and by virtue of a deed executed substantially by the county clerk, the party claiming title adverse to that conveyed by the deed shall be required to prove, in order to defeat the title, either that the real property was not subject to taxation for the years named in the deed, or that the taxes had been paid before the sale, that the property had been redeemed from the sale, according to the provisions of this act,

and that such redemption was had or made for the use and benefit of persons having the right of redemption under the laws of this state; or that there had been an entire omission to list or assess the property, to levy taxes, to give notice of the sale, or to sell the property.

(b) No person shall be permitted to question the title acquired by a deed of the county clerk without first showing that he or she, or the person under whom he or she claims title to the property, had title thereto, at the time of the sale, or that title was obtained from the United States, or this state, after the sale, and that all taxes due upon the property have been paid by such person, or the person under whom he or she claims title as aforesaid.

(c) In any case where a person had paid his or her taxes, and through mistake, or otherwise, by the county collector, the land upon which the taxes were paid was afterward sold, the deed of the county clerk shall not convey the title.

(d) In all cases where the owner of lands sold for taxes shall resist the validity of a tax title, the owner may prove fraud committed by the officer selling the land or in the purchaser to defeat the sale, and if fraud is so established, the sale and title shall be void.

**History.** Acts 1883, No. 114, § 146, p. 199; C. & M. Dig., § 10110; Pope's Dig., § 13874; A.S.A. 1947, § 84-1313.

**Meaning of "this act".** Acts 1883, No. 114, codified as §§ 14-15-201, 14-15-505, 16-20-106, 16-92-113 [repealed], 16-92-114, 16-92-115 [repealed], 16-96-401, 21-6-305, 25-16-517, 26-1-101, 26-2-101, 26-2-103, 26-2-108, 26-3-201, 26-3-204, 26-3-301, 26-25-101 — 26-25-103, 26-25-105, 26-26-702 — 26-26-704, 26-26-714, 26-26-716, 26-26-717, 26-26-903 — 26-26-909, 26-26-914, 26-26-1001, 26-26-1102, 26-26-1107, 26-26-1202 — 26-26-1205, 26-26-1505, 26-28-101, 26-28-103 — 26-28-108, 26-28-110, 26-28-111, 26-34-101 — 26-34-103, 26-34-108, 26-35-201, 26-35-301 — 26-35-303, 26-35-401, 26-35-402, 26-35-

503, 26-35-504, 26-35-603, 26-35-604, 26-35-901, 26-35-1001 — 26-35-1003 [repealed], 26-35-1004, 26-36-202, 26-36-204, 26-36-206 — 26-36-209, 26-36-211, 26-37-106, 26-37-206, 26-37-208, 26-37-209, 26-37-305, 26-37-307, 26-38-106, 26-38-107, 26-39-204, 26-39-205 [repealed], 26-39-206 — 26-39-221, 26-39-302 — 26-39-305 [repealed], 26-39-403, 26-39-406, 26-39-501 — 26-39-502, 26-39-503 — 26-39-509 [repealed], 26-76-102 — 26-76-108, 26-76-201 [repealed], and 26-76-202.

**Cross References.** Limitation on actions of ejectment against persons holding under tax title, § 18-61-106.

Tax sale void when taxes paid, § 26-37-206.

## CASE NOTES

### ANALYSIS

Applicability.  
Evidence to Defeat Tax Titles.  
Proof of Title.  
Standing.

### Applicability.

This section is limited to deeds made by county court clerks and does not embrace deeds made by the Commissioner of State Lands. *Townsend v. Martin*, 55 Ark. 192,

17 S.W. 875 (1891); *St. Louis Refrigerator & Wooden Gutter Co. v. Thornton*, 74 Ark. 383, 86 S.W. 852 (1905); *Lightle v. Laws*, 123 Ark. 537, 186 S.W. 73 (1916); *Lockridge v. Stokes*, 133 Ark. 559, 199 S.W. 89 (1917); *Horne v. Howe Lumber Co.*, 209 Ark. 202, 190 S.W.2d 7 (1945); *Staton v. Moore*, 210 Ark. 416, 196 S.W.2d 573 (1946); *Dill v. Snodgrass*, 213 Ark. 526, 211 S.W.2d 440 (1948); *Booth v. Peoples Loan & Inv. Co.*, 248 Ark. 1213, 455 S.W.2d 868 (1970).

This section has no applicability to a tax title void upon its face. *Rhodes v. Covington*, 69 Ark. 357, 63 S.W. 799 (1901).

This section does not apply to a case of conflicting tax titles. *Rhea v. McWilliams*, 73 Ark. 557, 84 S.W. 726 (1905); *McDaniel v. Berger*, 89 Ark. 139, 116 S.W. 194 (1909); *Dill v. Snodgrass*, 213 Ark. 526, 211 S.W.2d 440 (1948).

### **Evidence to Defeat Tax Titles.**

Where lands were erroneously sold for delinquent taxes, it is proper to permit collector to testify that taxes had been paid. *Davis v. Hare*, 32 Ark. 386 (1877) (decision under prior law).

Receipt for tax payment was of no validity where it was given after forfeiture of the land. *Thornton v. Smith*, 36 Ark. 508 (1880) (decision under prior law).

The levy and notice of sale referred to in this section refers to a levy or notice of sale made under authority of statute and not if made in any manner. *Allen v. Ozark Land Co.*, 55 Ark. 549, 18 S.W. 1042 (1892).

This section does not prevent a meritorious defense. *Cooper v. Freeman Lumber Co.*, 61 Ark. 36, 31 S.W. 981 (1895).

Burden of proof is upon person seeking to cancel tax title. *Newman v. Lybrand*, 130 Ark. 424, 197 S.W. 855 (1917).

Landowner who failed to pay taxes on land continuously since its forfeiture and sale for delinquent taxes was not precluded from asserting invalidity of tax sale for failure of county clerk to append to the recorded list of delinquent land the certificate of publication of the notice of sale. *Standard Sec. Co. v. Republic Mining*

& Mfg. Co., 207 Ark. 335, 180 S.W.2d 575 (1944).

Failure of the county clerk to execute and attach a certificate as to publication of delinquent list of lands prior to the date of sale is a meritorious defense to a tax deed issued by the clerk. *Hensley v. Phillips*, 215 Ark. 543, 221 S.W.2d 412 (1949).

Court erred in dismissing complaint where evidence showed that clerk had not attached warrant to tax books in delivering books to collector. *Ensminger v. Sheffield*, 220 Ark. 598, 248 S.W.2d 877 (1952).

### **Proof of Title.**

To question a tax title one must show that he, or those under whom he holds, had title at the time of the sale. *Osceola Land Co. v. Chicago Mill & Lumber Co.*, 84 Ark. 1, 103 S.W. 609 (1907); *Knauff v. National Cooperage & Woodenware Co.*, 99 Ark. 137, 137 S.W. 823 (1911).

Landowner must show title or that title was obtained from United States or from this state after sale. *Massengale v. Brown*, 159 Ark. 566, 252 S.W. 588 (1923).

Deraignment of perfect title is not necessary to sufficiently support a title for the purpose of setting aside void tax deeds. *Fine v. Bucha*, 247 Ark. 1074, 449 S.W.2d 406 (1970).

### **Standing.**

Parties did not lack standing to challenge tax sale where they proved that their predecessors in title had legal title to the property at the time of the tax sale. *Thorne v. Magness*, 34 Ark. App. 39, 805 S.W.2d 95 (1991).

**Cited:** *Trustees of First Baptist Church v. Ward*, 286 Ark. 238, 691 S.W.2d 151 (1985).

## **26-38-108 — 26-38-123. [Repealed.]**

**Publisher's Notes.** These sections, concerning procedure for suits to confirm title to land in the state, listing of forfeited, sold, or donated lands, distribution of back taxes, and fees, were repealed by Acts 1993, No. 646, § 11. The sections were derived from the following sources:

26-38-108. Acts 1935, No. 119, § 1; Pope's Dig., § 8711; A.S.A. 1947, § 84-1315.

26-38-109. Acts 1943, No. 299, § 1; A.S.A. 1947, § 84-1316.

26-38-110. Acts 1943, No. 299, § 2; A.S.A. 1947, § 84-1317.

26-38-111. Acts 1935, No. 119, § 2; Pope's Dig., § 8712; A.S.A. 1947, § 84-1318.

26-38-112. Acts 1935, No. 119, § 3; Pope's Dig., § 8713; A.S.A. 1947, § 84-1319.

26-38-113. Acts 1935, No. 119, § 4; Pope's Dig., § 8714; A.S.A. 1947, § 84-1320.

26-38-114. Acts 1935, No. 119, § 5;



Pope's Dig., § 8715; A.S.A. 1947, § 84-1321.

26-38-115. Acts 1935, No. 119, § 6; Pope's Dig., § 8716; A.S.A. 1947, § 84-1322.

26-38-116. Acts 1935, No. 119, § 7; Pope's Dig., § 8717; A.S.A. 1947, § 84-1323.

26-38-117. Acts 1935, No. 119, § 8; Pope's Dig., § 8718; A.S.A. 1947, § 84-1324.

26-38-118. Acts 1935, No. 119, § 9; Pope's Dig., § 8719; Acts 1939, No. 318,

§ 2; 1941, No. 423, § 1; A.S.A. 1947, § 84-1325.

26-38-119. Acts 1943, No. 299, § 5; A.S.A. 1947, § 84-1326.

26-38-120. Acts 1943, No. 299, § 4; A.S.A. 1947, § 84-1327.

26-38-121. Acts 1947, No. 375, § 2; A.S.A. 1947, § 84-1328.

26-38-122. Acts 1947, No. 375, § 3; A.S.A. 1947, § 84-1329.

26-38-123. Acts 1943, No. 299, § 6; A.S.A. 1947, § 84-1330.

For present law, see § 26-38-201 et seq.

## 26-38-124. [Repealed.]

**A.C.R.C. Notes.** This section as enacted by Acts 1989, No. 234, § 1, became effective Feb. 24, 1989, pursuant to an emergency clause. The section provided: "No deed issued after January 1, 1987, by the Commissioner of State Lands is void or voidable on the ground that the assess-

ment of the property taxes on the severed mineral interests was not subjoined to the assessment of property taxes on the surface realty." However, Acts 1989, No. 234 was subsequently repealed by Acts 1989, No. 904, § 2, effective July 3, 1989.

## SUBCHAPTER 2 — TITLE TO FORFEITED LANDS

### SECTION.

26-38-201. Suit to confirm title to land in state.

26-38-202. Complaint.

26-38-203. Publication of notice.

26-38-204. Additional parties to suit — Decree.

26-38-205. Decree.

### SECTION.

26-38-206. Effect of the decree of confirmation.

26-38-207. Court costs and publication fees.

26-38-208. Severed mineral rights.

26-38-209. Application.

**Effective Dates.** Acts 1993, No. 646, § 14: Mar. 23, 1993. Emergency clause provided: "It is hereby found and determined by the General Assembly that a method of strengthening and validating the title of the state and its grantees to real property forfeited for nonpayment of taxes must be established; that, in order to accomplish this purpose, the state shall be authorized to file confirmation proceedings against real property that is forfeited and conveyed to the state for the nonpayment of taxes; that, the purpose of this act is to cure all irregularities, informalities,

and defects connected with the procedures of forfeiture and sale. Further, a decree of confirmation shall act as a complete bar against any and all persons, firms, corporations, quasi-corporations, associations, trustees, and holders of beneficial interests who may claim the real property, subject only to the exceptions set forth in this act. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

**26-38-201. Suit to confirm title to land in state.**

(a) If real property has been forfeited to the State of Arkansas and conveyed by certification to the Commissioner of State Lands for the nonpayment of taxes, the state or the purchaser, donee, or redeemptor of the real property may file a suit for confirmation of title in the circuit court of the county where the real property lies, requesting that the title to the real property be confirmed and quieted in the State of Arkansas in care of the Commissioner of State Lands, or in the purchaser, donee, or redeemptor of the real property in fee simple.

(b)(1) Suit to confirm title in the State of Arkansas or in a purchaser, donee, or redeemptor may be filed at any time after the conveyance by certification.

(2) The state may elect to file for confirmation after conveyance from the state to a purchaser, donee, or redeemptor.

(3) If confirmation is filed after a conveyance from the state, the decree of confirmation inures to the benefit of the purchaser, donee, or redeemptor of the real property.

**History.** Acts 1993, No. 646, § 1; 2011, No. 1133, § 1.

**Amendments.** The 2011 amendment, in (a), substituted “If real property” for “Whenever any real property, section or town or city lots,” inserted “or the purchaser, donee, or redeemptor of the real

property” in two places, and substituted “in the circuit court of the county where” for “in the chancery court wherein”; inserted “in the State of Arkansas or in a purchaser, donee, or redeemptor” in (b)(1); and substituted “real property” for “lands” at the end of (b)(3).

**26-38-202. Complaint.**

(a) The Commissioner of State Lands on behalf of the State of Arkansas or the purchaser, donee, or redeemptor of the real property from the state shall file in the office of the clerk of the circuit court of the county in which the forfeited real property is situated a complaint requesting that title be quieted and confirmed to the real property described in the complaint.

(b)(1) The plaintiff shall attach to the complaint a certified list from the Commissioner of State Lands describing the real property and containing the years and the amounts for which the real property was forfeited.

(2) A purchaser, donee, or redeemptor of real property from the state shall attach to the complaint a copy of the limited warranty deed or other documentation evidencing the transfer of the real property from the state to the purchaser, donee, or redeemptor.

(c) The complaint may include as many parcels of real property as the Commissioner of State Lands or the purchaser, donee, or redeemptor of real property from the state deems proper, so long as all parcels lie within the county.

(d)(1) The certified list is all the proof that is required to show prima facie title in the state.

(2) A limited warranty deed or a donation deed is all the proof that is required to show prima facie title in a purchaser, donee, or redeemptor.

**History.** Acts 1993, No. 646, § 2; 2011, No. 1133, § 2.

**Amendments.** The 2011 amendment substituted “Complaint” for “Petition” in the section heading; inserted “or the purchaser, donee, or redeмпtor of the real property from the state” in (a) and (c); substituted “complaint” for “petition”

twice in (a) and in (c); inserted “quieted and” in (a); in (b)(1), substituted “The plaintiff shall attach to the complaint a certified list” for “The petition shall have a certified list attached to it” and substituted “the real property” for “each parcel”; inserted (b)(2); substituted “real property” for “land” in (c); and added (d)(2).

### 26-38-203. Publication of notice.

(a) Upon filing a complaint under § 26-38-202, the plaintiff shall publish for four (4) consecutive weeks, one (1) time per week, in a newspaper having general circulation in the county wherein the real property is located, a notice calling on all persons, firms, corporations, or improvement districts that can set up any right to the real property so conveyed and forfeited to show cause why the title to the real property should not be confirmed, quieted, and vested in the plaintiff in fee simple.

(b) The notice shall set forth the description of the real property and the name of the person, firm, or corporation that last paid the taxes on the real property.

**History.** Acts 1993, No. 646, § 4; 2011, No. 1133, § 3.

**Amendments.** The 2011 amendment, in (a), substituted “Upon filing a complaint under § 26-38-202, the plaintiff

shall publish” for “Upon the filing of the petition, there shall be published” and “vested in the plaintiff” for “vested in the State of Arkansas.”

### 26-38-204. Additional parties to suit — Decree.

(a) A person, firm, corporation, or improvement district claiming an interest in a parcel of real property adverse to the plaintiff under § 26-38-202 shall join or be made a party and shall have the interest adjudicated in a suit under this subchapter.

(b) If a person, firm, corporation, or improvement district claims that the conveyance of real property to the plaintiff was void, the person, firm, corporation, or improvement district shall tender to the clerk of the circuit court the amount of taxes, penalties, interest, and costs due and owing on the real property.

(c)(1) If the person, firm, corporation, or improvement district made a party defendant to the proceeding under this section establishes a superior claim to all or part of the real property, the decree of the circuit court shall:

(A) Be rendered in favor of the party defendant, with respect to the affected real property;

(B) Order the defendant to pay all taxes, penalties, interest, and costs due on the affected real property;

(C) Order the Commissioner of State Lands to issue a deed of redemption to the party defendant for the affected real property; and

(D) Set aside the transfer from the state to the purchaser, donee, or redeмпtor of the affected real property.



(2) If the party defendant fails to establish a valid defense, an order so stating will be entered, and the party defendant will be allowed to recover the funds tendered to the clerk under subsection (b) of this section.

**History.** Acts 1993, No. 646, § 3; 2011, No. 1133, § 4.

**Amendments.** The 2011 amendment rewrote the section.

### **26-38-205. Decree.**

The decree of a circuit court confirming the forfeiture and conveyance to the state of real property shall inure to the benefit of the purchaser, donee, or redemtor of the real property.

**History.** Acts 1993, No. 646, § 6.

### **26-38-206. Effect of the decree of confirmation.**

(a) Except as provided in this section and § 26-37-203, the decree of the circuit court confirming the forfeiture and conveyance to the plaintiff under § 26-38-202 shall operate:

(1) As a complete bar at law and in equity of a claim or defense of all persons, firms, corporations, quasi-corporations, associations, trustees, and holders of beneficial interests to the title of the real property; and

(2) To vest the complete and indefeasible title to the real property in the plaintiff under § 26-38-202 and the plaintiff's grantees in fee simple, free and clear of all claims regardless of whether the forfeiture and conveyance is void or voidable because of a defect or irregularity in the proceedings to forfeit and convey the real property.

(b) All parties have the right to appeal a decree of confirmation under this subchapter pursuant to the Arkansas Rules of Civil Procedure.

(c)(1) The claim of a person, firm, corporation, quasi-corporation, association, trustee, or holder of a beneficial interest with a properly recorded interest in the real property that is not properly served with notice of the confirmation proceedings under this subchapter is barred if not commenced within:

(A) One (1) year of the posting of a notice of entry of the decree of confirmation under subdivision (c)(2) of this section; or

(B) Three (3) years from the date that the decree is entered if a notice of entry of the decree of confirmation under subdivision (c)(2) of this section is not posted.

(2) If a notice of entry of a decree of confirmation is posted under this subsection:

(A) The notice shall be posted conspicuously on the property; and

(B) A sworn affidavit evidencing the posting shall be filed with the circuit court in the quiet title action by the party that obtained title to the real property in the quiet title action.

**History.** Acts 1993, No. 646, § 5; 2011, No. 1133, § 5.

**Amendments.** The 2011 amendment rewrote the section.

## CASE NOTES

**Applicability.**

Debtor who claimed an equitable interest in the property based on an alleged oral rent-to purchase agreement with the owner could challenge the tax sale and transfer of property to the subsequent purchaser because the state did not file an

action in Chancery Court under § 26-38-206, to bar any subsequent claims. Further, § 26-37-203 gave the debtor two hears to contest the validity of the conveyance. *In re Paro*, 362 B.R. 419 (Bankr. E.D. Ark. 2007).

**26-38-207. Court costs and publication fees.**

(a) Fees and costs associated with the filing of confirmation suits may be charged to any purchaser, donee, or redemtor to whose benefit the decree of confirmation inures.

(b) The state shall be exempt from payment of court costs.

(c) Fees for publication of notices required under this subchapter shall be governed by § 26-37-108 [repealed].

**History.** Acts 1993, No. 646, §§ 6, 7.

was repealed by Acts 1993, No. 985, § 2.

**A.C.R.C. Notes.** Section 26-37-108 referred to in subsection (c) of this section

For present law, see § 26-37-107.

**26-38-208. Severed mineral rights.**

(a)(1) Subject to the additional requirements of this section, this subchapter applies to severed mineral interests that are forfeited and conveyed to the state for the nonpayment of taxes.

(2) For purposes of this subchapter, wherever the terms “real property”, “parcel”, “parcels”, or “parcel of real property” appear, the terms also shall mean severed mineral interests.

(b)(1) Upon filing a suit to confirm title in severed mineral interests, the plaintiff shall:

(A) Undertake a search of the records listed in § 18-60-502 to identify persons entitled to notice; and

(B) Provide notice to all persons that have or claim to have an interest in the severed mineral interests.

(2) The interested persons shall be:

(A) Summoned as defendants in the case; and

(B) Served in the manner required for other civil actions.

(3) At a minimum, the following persons shall be made defendants in a suit to confirm title to severed mineral interests:

(A) All lessors and lessees identified in a recorded and unreleased oil, gas, or mineral lease pertaining to the severed mineral interests;

(B) All persons identified in the county real estate or county tax records as an owner of the severed mineral interests immediately before forfeiture of the severed mineral interests for nonpayment of taxes; and

(C) All heirs, successors, and assigns of the persons described in subdivisions (b)(3)(A) or (b)(3)(B), if the persons are deceased or have assigned or otherwise transferred their interest in the severed mineral interests.

(c)(1) In any suit to confirm title in severed mineral interests, proof that the forfeiture or conveyance sought to be confirmed is void and not merely voidable is a conclusive defense to the suit.

(2) Proof that the forfeiture or conveyance sought to be confirmed is merely voidable but not void shall be considered by the court and determined on the facts as justice and equity requires.

**History.** Acts 1993, No. 646, § 8; 2011, No. 1133, § 6.

**Amendments.** The 2011 amendment added "Subject to the additional require-

ments of this section" in (a)(1); added "For purposes of this subchapter" in (a)(2); and added (b) and (c).

## 26-38-209. Application.

The provisions of this subchapter are applicable to all forfeitures and conveyances to the state or from the state whether such forfeiture or conveyance occurred before or after March 23, 1993.

**History.** Acts 1993, No. 646, § 9.

## CHAPTER 39

## SETTLEMENT OF MONEYS COLLECTED

### SUBCHAPTER.

1. GENERAL PROVISIONS. [RESERVED.]
2. PAYMENT OF FUNDS GENERALLY.
3. REPORT OF DELINQUENT TAXPAYERS.
4. SETTLEMENT OF COUNTY COLLECTORS' ACCOUNTS.
5. FAILURE OF COUNTY COLLECTORS TO ACCOUNT.

### RESEARCH REFERENCES

**Am. Jur.** 72 Am. Jur. 2d, State Tax., § 881 et seq.      **C.J.S.** 84 C.J.S., Tax., § 645 et seq.

### SUBCHAPTER 1 — GENERAL PROVISIONS

[Reserved]

### SUBCHAPTER 2 — PAYMENT OF FUNDS GENERALLY

#### SECTION.

- 26-39-201. Time for payment.  
 26-39-202, 26-39-203. [Repealed.]  
 26-39-204. County collector to pay in kind.  
 26-39-205. [Repealed.]  
 26-39-206. Settlement for other moneys received.

#### SECTION.

- 26-39-207. Taxes on convictions, etc.  
 26-39-208. Duplicate receipts given for funds received.  
 26-39-209. Charging of funds.  
 26-39-210. Record of settlement.  
 26-39-211. Deficit in settlement.  
 26-39-212. Failure to make settlement.



## SECTION.

- 26-39-213. Failure to pay amount due.  
 26-39-214. Adjustment on failure to settle.  
 26-39-215. Failure of delinquent officer to pay.  
 26-39-216. Judgment for amount due.

## SECTION.

- 26-39-217. Reexamination of settlement.  
 26-39-218. Lien for balance due.  
 26-39-219. Judgment against delinquent officers and securities.  
 26-39-220. Adjustment of errors.  
 26-39-221. Notice of reexamination.

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**Cross References.** Arkansas Governmental Compliance Act, § 10-4-301 et seq.

Penalty for failure to settle, § 21-7-211.

**Effective Dates.** Acts 1883, No. 114, § 226: effective on passage.

Acts 1911, No. 415, § 3: approved May 31, 1911. Emergency declared.

Acts 1935, No. 282, § 9: effective on passage.

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## 26-39-201. Time for payment.

(a)(1) A county clerk, probate clerk, circuit clerk, county sheriff, county collector, or any other county official shall pay over to the county treasurer on the first of each month, or within ten (10) working days thereafter, all funds in his or her possession belonging to the county or its subdivisions that are by law required to be paid into the county treasury, whether taxes, fines, or any moneys that are collected for any purpose by law and belonging to the county.

(2) The county collector shall pay to the Treasurer of State all moneys belonging to the State of Arkansas on the day mentioned in subdivision (a)(1) of this section.

(b)(1) This section does not mean that the county collector shall make a distribution of taxes to all funds but that he or she shall settle with the county treasurer in a lump sum, and the county treasurer shall credit it to the county collector's unapportioned account.

(2) Upon the issuance of a certificate of the county clerk or other county officer designated pursuant to § 26-28-102(a) that is issued on or before the thirtieth day of each month, the county treasurer shall transfer to the various funds ninety percent (90%) of the advance payments made by the county collector during the collecting period and, upon final settlement, the proper adjustments shall be made with the various accounts, and the balance remaining in the unapportioned account shall be distributed upon order of the county court approving the final settlement of the county collector.

**History.** Acts 1935, No. 282, § 7; Pope's Dig., § 13905; Acts 1973, No. 160, § 1; A.S.A. 1947, § 84-1401; Acts 1995, No. 856, § 1; 2009, No. 721, § 2; 2011, No. 617, § 4.

**Publisher's Notes.** Acts 1883, No. 114,

§ 191, provided that all persons chargeable with moneys belonging to any county should render their accounts to, and settle with, the county court at each regular session.

**Amendments.** The 2009 amendment

inserted "or other county officer designated pursuant to § 26-28-102(a)" in (b)(2), and made minor stylistic changes.

The 2011 amendment, in (a)(1), deleted "constables" following "circuit clerk," de-

leted "in the State of Arkansas" following "any other county official," substituted "ten (10)" for "five (5)," and substituted "in his or her possession" for "in each of their hands."

## CASE NOTES

### ANALYSIS

Audits.  
Penalties.  
Sureties.

#### Audits.

County court could employ expert accountant to audit books of county officers. *E.F. Leathem & Co. v. Jackson County*, 122 Ark. 114, 182 S.W. 570 (1916) (decision under prior law).

#### Penalties.

The illegal receipt of specific payments by county sheriff being within the scope of this section, a charge of the five percent penalty provided for in § 26-39-501 by the trial court is proper. *Thomas v. Williford*, 259 Ark. 354, 534 S.W.2d 2 (1976).

There are no criminal penalties for a collector's failure to comply with the deposit requirements of this section. *Mhoon v. State*, 277 Ark. 341, 642 S.W.2d 292 (1982).

Failure of tax collector to deposit his collections monthly with treasurer as required by this section does not constitute a

misdemeanor subject to the penalty provisions of § 26-39-204, since the statutes concern two separate and distinct duties of the collector. *Mhoon v. State*, 277 Ark. 341, 642 S.W.2d 292 (1982).

A tax collector's failure to deposit his collections promptly is not in itself a criminal offense. *Mhoon v. State*, 277 Ark. 341, 642 S.W.2d 292 (1982).

#### Sureties.

A cause of action cannot accrue against surety until final judgment fixing county collector's liability has been entered. *Fireman's Fund Ins. Co. v. Polk County*, 260 Ark. 799, 543 S.W.2d 947 (1976).

Statute of limitations on an action against surety on county collector's bond does not begin to run until collector actually files his settlement with county court or until county court adjusts collector's account following notice to the delinquent officer. *Fireman's Fund Ins. Co. v. Polk County*, 260 Ark. 799, 543 S.W.2d 947 (1976).

**Cited:** *Newton v. Edwards*, 203 Ark. 18, 155 S.W.2d 591 (1941).

## 26-39-202, 26-39-203. [Repealed.]

**Publisher's Notes.** These sections, concerning report of tax installments and collector charged for late filings, were repealed by Acts 2003, No. 295, § 13. The sections were derived from:

26-39-202. Acts 1933 (1st Ex. Sess.), No.

16, § 2; Pope's Dig., § 13904; A.S.A. 1947, § 84-1403.

26-39-203. Acts 1911, No. 415, § 2; C. & M. Dig., § 10067; Pope's Dig., § 13828; A.S.A. 1947, § 84-1404.

## 26-39-204. County collector to pay in kind.

(a) The county collector shall pay into the State Treasury and the county treasury, in kind, all money collected by him or her, whether specie, United States paper currency, national bank notes, silver or gold certificates, or warrants or scrip, or check drawn on the county collector's account, as authorized by law to be received.

(b) Every county collector or other officer who shall fail to comply with the provisions of this section shall:

(1) Be fined one hundred dollars (\$100) for each violation;

(2) Be held liable on his or her official bond for the difference in value between the funds received and those paid; and

(3) Not be eligible to hold any office of trust in this state.

**History.** Acts 1883, No. 114, § 113, p. § 13805; A.S.A. 1947, § 84-1402; Acts 199; C. & M. Dig., § 10046; Pope's Dig., 2003, No. 295, § 9.

### CASE NOTES

#### ANALYSIS

Other Officers.  
Payment in Kind.  
Penalty.

#### Other Officers.

A county clerk comes within the designation "or other officer" under this section. *Newton County v. Phillips*, 181 Ark. 177, 25 S.W.2d 419 (1930).

#### Payment in Kind.

Where collector collected tax in currency and paid it to treasurer in county warrants, his official liability ceased since county warrants were legal tender. *Askew v. Columbia County*, 32 Ark. 270 (1877) (decision under prior law).

Where county clerk received money in payment of taxes, he was required to make his settlement "in kind" and could not make settlement in depreciated county warrants, although he would have been required to accept them if they had been offered in payment of taxes. *Newton County v. Phillips*, 181 Ark. 177, 25 S.W.2d 419 (1930).

#### Penalty.

Failure of tax collector to deposit his collections monthly with treasurer as required by § 26-39-201 does not constitute a misdemeanor subject to the penalty provisions of this section, since the statutes concern two separate and distinct duties of the collector. *Mhoun v. State*, 277 Ark. 341, 642 S.W.2d 292 (1982).

### 26-39-205. [Repealed.]

**Publisher's Notes.** This section, concerning settlement of accounts for blank licenses, was repealed by Acts 2003, No. 295, § 14. The section was derived from

Acts 1883, No. 114, § 184, p. 199; C. & M. Dig., § 10146; Pope's Dig., § 13928; A.S.A. 1947, § 84-1425.

### 26-39-206. Settlement for other moneys received.

(a) In like manner and time as provided in § 26-39-205 [repealed], the county sheriff or county collector shall be required to settle his or her accounts of all moneys received by him or her on account of taxes, fines, penalties, and judgments. They shall be entered of record, so as to show:

- (1) What is due the state and county, respectively;
- (2) From what officer received;
- (3) From what branch of revenue; and
- (4) The particular fund, if any, to which it belongs.

(b) If any county collector shall fail to make settlement with the county court at the time required, he or she shall be attached until he or she makes a settlement. Immediately after settlement with the county court, the county clerk shall certify to the Auditor of State the amount due the state. The county collector shall, within fifteen (15) days, pay the sums into the State Treasury and, in ten (10) days, pay over to the county treasurer all sums due the county.



**History.** Acts 1883, No. 114, § 185, p. 199; C. & M. Dig., § 10147; Pope's Dig., § 13929; A.S.A. 1947, § 84-1426.

**A.C.R.C. Notes.** Former § 26-39-205, referred to in subsection (a) of this section, provided, "The county court shall, at each regular term, cause the collector to settle

his accounts of all blank licenses with which he shall stand charged. After giving him credit for all licenses returned, the court shall ascertain the amount due from him on that account and shall cause it to be entered of record, so as to show the amount due the county."

### **26-39-207. Taxes on convictions, etc.**

The county sheriff shall collect and account for all taxes due upon convictions and all fines, forfeitures, and other sums of money, by whatever name designated, owing to the state or any county by virtue of any order, judgment, or decree of a court of record.

**History.** Acts 1883, No. 114, § 186, p. 199; C. & M. Dig., § 10148; Pope's Dig., § 13930; A.S.A. 1947, § 84-1427.

and deposit, § 16-92-118.

Responsibility for collection, § 16-13-709.

**Cross References.** Fines, collection

### **26-39-208. Duplicate receipts given for funds received.**

(a) Whenever the county sheriff or county collector shall receive the amount due from any officer by voluntary payment or by the sale of goods and chattels, he or she shall give the officer duplicate receipts for it, stating therein:

- (1) The whole amount received;
- (2) How much for the state;
- (3) How much for the county; and
- (4) The particular fund to which it belongs.

(b) The officer taking the receipts shall, without delay, deposit one (1) of the receipts with the county clerk.

**History.** Acts 1883, No. 114, § 187, p. 199; C. & M. Dig., § 10149; Pope's Dig., § 13931; A.S.A. 1947, § 84-1428.

### **26-39-209. Charging of funds.**

(a) The county clerk shall charge the county sheriff or county collector and county treasurer with all moneys that may come into their hands by virtue of any of the provisions of this subtitle.

(b)(1) The money received for penalty and costs of advertising shall be first applied by the county sheriff or county collector to the cost of advertising delinquent lands, and the surplus, if any, paid into the county treasury at the time of his or her annual settlement.

(2) Should there not be sufficient penalty and costs of advertising to pay the cost of advertising delinquent lands, the balance shall be paid out of the county treasury.

**History.** Acts 1883, No. 114, § 188, p. 199; C. & M. Dig., § 10150; Pope's Dig., § 13932; A.S.A. 1947, § 84-1429.

**26-39-210. Record of settlement.**

(a) Whenever the county court shall make a settlement with any officer, the substance thereof shall be entered of record so as to show separately:

- (1) The whole amount received by the officer;
  - (2) The amount of commission allowed him or her;
  - (3) How much remains due to the state and how much to the county;
- and

(4) On what account each sum of money was received and to what particular fund, if any, it belongs.

(b) All officers who shall have made settlements with the county courts as provided in this chapter shall immediately pay to the county treasurer the full amount with which they shall stand charged on their settlement. In default thereof, the county sheriff or county collector shall enforce the payment in the manner and by the means prescribed in this subtitle for enforcing the collection of taxes.

**History.** Acts 1883, No. 114, §§ 192, 10155; Pope's Dig., §§ 13936, 13937; 193, p. 199; C. & M. Dig., §§ 10154, A.S.A. 1947, §§ 84-1431, 84-1432.

**CASE NOTES**

**Cited:** Fireman's Fund Ins. Co. v. Polk County, 260 Ark. 799, 543 S.W.2d 947 (1976).

**26-39-211. Deficit in settlement.**

If the settlement of the county collectors or county sheriffs with the county clerks shows any other deficit than that authorized by the provisions of this chapter, it shall be the duty of the county court to immediately notify the prosecuting attorney for the county in which the county collector or county sheriff resides of that fact. Upon notice, it shall be the duty of the prosecuting attorney to immediately bring suit against the county collector or county sheriff and his or her securities for the amount of the deficiency, and also to prosecute the county collector or county sheriff by indictment for malfeasance in office.

**History.** Acts 1883, No. 114, § 225, p. 199; C. & M. Dig., § 10196; Pope's Dig., § 13979; A.S.A. 1947, § 84-1433.

**26-39-212. Failure to make settlement.**

Every officer required to make settlement who shall fail to settle his or her accounts in the time and manner prescribed by law may be attached and imprisoned until settlement shall be made to the satisfaction of the county court to which he or she is accountable.

**History.** Acts 1883, No. 114, § 194, p. 199; C. & M. Dig., § 10156; Pope's Dig., § 13938; A.S.A. 1947, § 84-1434.

### 26-39-213. Failure to pay amount due.

Every officer who shall fail to pay the amount due from him or her on settlement and who shall be returned by the county collector or county treasurer to the county court as a delinquent, so that the county collector or county treasurer shall be credited in their accounts with the amount of the delinquency, shall forfeit five percent (5%) per month on the amount due from the time it ought to have been paid, until collected, which may be collected by suit on his or her official bond.

**History.** Acts 1883, No. 114, § 195, p. 199; C. & M. Dig., § 10157; Pope's Dig., § 13939; A.S.A. 1947, § 84-1435.

### 26-39-214. Adjustment on failure to settle.

(a) If any person chargeable shall neglect to render true accounts or settle as provided in this chapter, the county court shall adjust the accounts of the delinquent officer according to the best information that can be obtained and ascertain the balance due the county.

(b) In these cases, the county court may refuse to allow any commission to the delinquent officer, and he or she shall moreover, without delay, pay into the county treasury the balance found due as indicated.

**History.** Acts 1883, No. 114, §§ 196, 10159; Pope's Dig., §§ 13940, 13941; 197, p. 199; C. & M. Dig., §§ 10158, A.S.A. 1947, §§ 84-1436, 84-1437.

## CASE NOTES

### ANALYSIS

Notice.  
Sureties.

#### Notice.

It was not necessary that delinquent officer have notice that a settlement of his accounts was to be made by the court under former statute, where no judgment could be rendered, the proceedings being preliminary. *Trice v. Crittenden County*, 7

Ark. 159 (1846); *Carnall v. Crawford County*, 11 Ark. 604 (1851) (decisions under prior law).

#### Sureties.

A cause of action cannot accrue against surety until final judgment fixing county collector's liability has been entered. *Fireman's Fund Ins. Co. v. Polk County*, 260 Ark. 799, 543 S.W.2d 947 (1976).

**Cited:** *E.F. Leathem & Co. v. Jackson County*, 122 Ark. 114, 182 S.W. 570 (1916).

### 26-39-215. Failure of delinquent officer to pay.

If a delinquent officer shall not pay the amount found due the county and produce the county treasurer's receipt therefor within ten (10) days after the balance is ascertained, the county clerk shall charge the delinquent, as a penalty for such failure, twenty-five percent (25%) on the amount then due.



**History.** Acts 1883, No. 114, § 198, p. 199; C. & M. Dig., § 10160; Pope's Dig., § 13942; A.S.A. 1947, § 84-1438.

## 26-39-216. Judgment for amount due.

Unless a delinquent officer shall appear upon the first day of the next succeeding session of the county court and show good cause for setting aside the settlement, the county court shall enter judgment for the amount due with the penalty added thereon, and fifty percent (50%) per annum, until it shall be paid and may issue execution thereon.

**History.** Acts 1883, No. 114, § 199, p. 199; C. & M. Dig., § 10161; Pope's Dig., § 13943; A.S.A. 1947, § 84-1439.

## CASE NOTES

### ANALYSIS

Interest.  
Jurisdiction.  
Notice.  
Sureties.

### Interest.

It is proper to adjudge interest at rate of 50 percent on both the amount found due and the penalty. *Carnall v. Crawford County*, 11 Ark. 604 (1851) (decision under prior law).

### Jurisdiction.

County court was forum where liability of collector of the county revenue was to be ascertained and evidenced by its records, and an adjudication in that forum was conclusive evidence against sureties as well as collector. *Jones v. State*, 14 Ark. 170 (1853) (decision under prior law).

It was the province of the county court to adjust and settle the accounts of the collector, and they could not be settled in the circuit court in an action on the collector's bond. *Goree v. State*, 22 Ark. 236 (1860) (decision under prior law).

County court could render judgment against delinquent collector or his securities for county revenue that he has collected and failed to pay over, together with

penalties. *Christian v. Ashley County*, 24 Ark. 142 (1863) (decision under prior law).

### Notice.

Unless delinquent officer appeared at next term and showed cause for setting aside settlement, a court could render judgment against him, provided he had notice to appear; however, he could waive notice by appearing and moving to set aside the settlement. *Trice v. Crittenden County*, 7 Ark. 159 (1846) (decision under prior law).

If a collector was dead, notice could be given his administrator. *Goree v. State*, 22 Ark. 236 (1860) (decision under prior law).

### Sureties.

In action upon collector's bond for collecting and failing to pay over county revenues, it had to be averred either that the collector had settled with the county court and had failed to pay the amount due or that he had failed to settle and the county court had proceeded to adjust his accounts and render judgment against him. *Jones v. State*, 14 Ark. 170 (1853); *State v. Croft*, 24 Ark. 550 (1867) (decisions under prior law).

A cause of action cannot accrue against surety until final judgment fixing county collector's liability has been entered. *Fireman's Fund Ins. Co. v. Polk County*, 260 Ark. 799, 543 S.W.2d 947 (1976).

## 26-39-217. Reexamination of settlement.

If good cause be shown for setting aside the settlement, the county court may reexamine, settle, and adjust it according to law and may remit any penalty that may have been imposed.

**History.** Acts 1883, No. 114, § 200, p. 199; C. & M. Dig., § 10162; Pope's Dig., § 13944; A.S.A. 1947, § 84-1440.

### CASE NOTES

**Cited:** Fireman's Fund Ins. Co. v. Polk County, 260 Ark. 799, 543 S.W.2d 947 (1976).

### 26-39-218. Lien for balance due.

The amount or balance of every account settled and due to the county shall be a lien from the date of the settlement of the account on the real estate and personal property of the delinquent officer situated in the county wherein each delinquent lives.

**History.** Acts 1883, No. 114, § 201, p. 199; C. & M. Dig., § 10163; Pope's Dig., § 13945; A.S.A. 1947, § 84-1441.

### CASE NOTES

#### ANALYSIS

Applicability.  
Appeals.  
Priorities.

#### Applicability.

This section applies both to the original account of an officer and to his readjusted account. Taylor v. Georgia State Sav. Ass'n, 141 Ark. 425, 218 S.W. 180 (1920).

Lien is coextensive with limits of whole county, notwithstanding county is divided into two districts. Taylor v. Georgia State Sav. Ass'n, 141 Ark. 425, 218 S.W. 180 (1920).

Statute of limitations fixing period of three years on judgment liens (§ 16-65-117) is not applicable to this section. Taylor v. Georgia State Sav. Ass'n, 141 Ark. 425, 218 S.W. 180 (1920).

#### Appeals.

Lien in favor of county on land of tax collector is not extinguished by supersedeas bond executed by collector on ap-

peal to the Supreme Court from an adjustment of his account, the bond merely suspending enforcement during pendency of the appeal. Taylor v. Georgia State Sav. Ass'n, 141 Ark. 425, 218 S.W. 180 (1920).

Where a county obtained a lien under this section and the collector appealed to the Supreme Court and executed a supersedeas bond, the county could properly enforce the county's lien against the land without first exhausting its remedy against the sureties on the supersedeas bond. Taylor v. Georgia State Sav. Ass'n, 141 Ark. 425, 218 S.W. 180 (1920).

#### Priorities.

Where collector's land was sold under execution and purchased by surety on collector's bond, a junior mortgage lienholder could not subsequently ask that the surety be compelled to secure reimbursement for losses out of property other than that mortgaged. Taylor v. Georgia State Sav. Ass'n, 141 Ark. 425, 218 S.W. 180 (1920).

### 26-39-219. Judgment against delinquent officers and securities.

When any balance shall be found against any county clerk, county sheriff, county collector, county coroner, constable, or other officer for moneys accruing to the county treasury and it shall not be paid within the time prescribed by law, it shall be lawful for the county court, fifteen

(15) days' notice being given to the delinquent officers and their securities, to render judgment against the delinquents and their securities for the amount of all moneys ascertained to be due the county and issue execution therefor.

**History.** Acts 1883, No. 114, § 202, p. 199; C. & M. Dig., § 10164; Pope's Dig., § 13946; A.S.A. 1947, § 84-1442.

CASE NOTES

**Settlements.**

Prosecuting attorney who had no notice of suit against county circuit clerk and his sureties for alleged indebtedness to county had authority to make a settlement and dismiss the case, and county

judge or taxpayer could not intervene to prevent such action. *Rothrock v. Walker*, 197 Ark. 846, 125 S.W.2d 459 (1939).  
**Cited:** *Fireman's Fund Ins. Co. v. Polk County*, 260 Ark. 799, 543 S.W.2d 947 (1976).

**26-39-220. Adjustment of errors.**

- (a)(1) The county court has the duty to reconsider and adjust the settlement of any county officer made with the county court, including, but not limited to, the final tax settlement and distribution for any error discovered within three (3) years from the date of the settlement.
- (2) Adjustment of an error shall be made within the year of discovery.
- (b) Upon discovery of any error in the settlement after three (3) years, but within five (5) years from the date of the settlement, the county judge has the duty to petition the circuit court to obtain an order to correct the errors.

**History.** Acts 1883, No. 114, § 203, p. 199; C. & M. Dig., § 10165; Acts 1927, No. 339, § 1; Pope's Dig., § 13947; Acts 1985, No. 239, § 1; A.S.A. 1947, § 84-1443.

CASE NOTES

ANALYSIS

- Applicability.
- Authority.
- Equitable Relief.
- Liens.
- Time Limitations.

**Applicability.**

This section includes errors of law as well as errors of fact. *Haley v. Thompson*, 116 Ark. 354, 172 S.W. 880 (1915).  
Making corrections will not invalidate proceedings already instituted against bondsmen. *Graham v. State*, 100 Ark. 571, 140 S.W. 735 (1911).

**Authority.**

County court has power to open and reexamine settlement of collector upon

notice and without a petition. *White County v. Key*, 30 Ark. 603 (1875) (decision under prior law).  
Court has power to reexamine, restate, and correct errors, and in doing so has power to look into the validity of credits and claims that have already been allowed. *White County v. Key*, 30 Ark. 603 (1875) (decision under prior law).

**Equitable Relief.**

Chancery court may, after expiration of period prescribed in this section, grant relief upon an allegation of fraud. *State ex rel. Marion County v. Perkins*, 101 Ark. 358, 142 S.W. 515 (1912); *Fuller v. State*, 112 Ark. 91, 164 S.W. 770 (1914); *Yates v. State*, 186 Ark. 749, 54 S.W.2d 981 (1932).  
This section applies only to settlements of officers handling revenue and will not



preclude equity from granting relief against illegal exactions from the county by the circuit court. *Johnson County v. Bost*, 139 Ark. 35, 213 S.W. 388 (1919).

The original jurisdiction of equity to correct mistakes was not divested by this section. *Big Gum Drainage Dist. v. Crews*, 158 Ark. 566, 250 S.W. 865 (1923).

Where county court approved settlement allowing credit to treasurer for funds lost in closed bank, it was a legal fraud against which equity would relieve. *State Use Crawfordsville Special School Dist. v. Huxtable*, 178 Ark. 361, 12 S.W.2d 1 (1928).

#### **Liens.**

Balances found due under this section become a lien under provisions of § 26-39-218. *Taylor v. Georgia State Sav. Ass'n*, 141 Ark. 425, 218 S.W. 180 (1920).

#### **Time Limitations.**

Where proceedings were not commenced until after expiration of statutory period, it was too late, although, prior to expiration of such period, ex parte pro-

ceedings were taken with regard to such settlement, but not under the provisions of this section. *Bledsoe v. State*, 167 Ark. 160, 267 S.W. 571 (1925).

This section did not bar county's suit against treasurer for excessive fees after one year from date of treasurer's settlement with county court. *McCoy v. State*, 190 Ark. 297, 79 S.W.2d 94 (1935) (decision prior to 1985 amendment).

Exclusive remedy of county treasurer claiming credit against county for amount of unpaid check given to him by collector in settlement in October, 1932, was under this section, but having treated the check as a cash item and apportioned it to the several funds entitled thereto, treasurer could not correct it in his settlement of 1935. *Montgomery County v. Elder*, 192 Ark. 845, 96 S.W.2d 453 (1936) (decision prior to 1985 amendment).

**Cited:** *Gargill v. Matthews*, 137 Ark. 75, 207 S.W. 225 (1918); *Fireman's Fund Ins. Co. v. Polk County*, 260 Ark. 799, 543 S.W.2d 947 (1976).

### **26-39-221. Notice of reexamination.**

Before any settlement shall be reexamined, it shall be the duty of the county court to give the officer ten (10) days' notice of the time and place where the settlement will be adjusted.

**History.** Acts 1883, No. 114, § 204, p. 199; C. & M. Dig., § 10166; Pope's Dig., § 13948; A.S.A. 1947, § 84-1444.

#### **CASE NOTES**

##### **In General.**

Order of county court is not binding on officer without notice having been given as required. *Bledsoe v. State*, 167 Ark. 160, 267 S.W. 571 (1925).

**Cited:** *Fireman's Fund Ins. Co. v. Polk County*, 260 Ark. 799, 543 S.W.2d 947 (1976).

### **SUBCHAPTER 3 — REPORT OF DELINQUENT TAXPAYERS**

#### **SECTION.**

26-39-301. Penalty.

26-39-302 — 26-39-305. [Repealed.]

**Effective Dates.** Acts 1883, No. 114, § 226: effective on passage.

Acts 1887, No. 92, § 58: effective on passage.

Acts 1903, No. 141, § 3: effective on passage.

Acts 1905, No. 54, § 2: effective on passage.

Acts 1935, No. 282, § 9: effective on passage.

Acts 1941, No. 64, § 6: effective on passage.

## 26-39-301. Penalty.

Any county collector who shall fail to file with the county clerk a full and complete list of all delinquent personal taxes on the day required by law shall be guilty of a violation punishable by a fine of one hundred dollars (\$100) or removal from office.

**History.** Acts 1935, No. 282, § 2; Pope's 1981, No. 846, § 1; A.S.A. 1947, § 84-Dig., § 13903; Acts 1941, No. 64, § 1; 1410; 2005, No. 1994, § 171.

## 26-39-302 — 26-39-305. [Repealed.]

**Publisher's Notes.** These sections, concerning reporting delinquent and insolvent taxpayers, list to be under oath, collector given credit for unpaid taxes, and collection of delinquencies after credit of allowance, were repealed by Acts 2003, No. 295, § 15. The sections were derived from:

26-39-302. Acts 1883, No. 114, § 122, p. 199; 1887, No. 92, § 44, p. 143; 1903, No. 141, § 1, p. 241; 1905, No. 54, § 1, p. 153; C. & M. Dig., § 10073; A.S.A. 1947, § 84-1405.

26-39-303. Acts 1883, No. 114, § 124, p. 199; C. & M. Dig., § 10077; Pope's Dig., § 13838; A.S.A. 1947, § 84-1408.

26-39-304. Acts 1883, No. 114, § 122, p. 199; C. & M. Dig., §§ 10074, 10075; Pope's Dig., §§ 13835, 13836; A.S.A. 1947, § 84-1406.

26-39-305. Acts 1883, No. 114, § 123, p. 199; C. & M. Dig., § 10076; Pope's Dig., § 13837; A.S.A. 1947, § 84-1407.

## SUBCHAPTER 4 — SETTLEMENT OF COUNTY COLLECTORS' ACCOUNTS

### SECTION.

26-39-401. Penalty.

26-39-402. Review by county court.

26-39-403. Approval or rejection.

26-39-404. Settlement with county and county subdivisions.

### SECTION.

26-39-405. [Repealed.]

26-39-406. Distribution to funds.

26-39-407. [Repealed.]

**Cross References.** Penalty for failure to settle, § 21-7-211.

**Preambles.** Acts 1887, No. 13 contained a preamble which read:

"Whereas, 1st. Lands have been sold to the State under proceedings purporting to have been had in the courts of this State by virtue of an Act of the General Assembly thereof entitled 'An Act to enforce the payment of Overdue Taxes,' approved March 12, 1881, when the taxes for the

alleged nonpayment of which such lands were so sold under said proceedings and decrees of said courts, had been in fact paid prior to any such sales, proceedings or decrees of said courts; and,

"Whereas, 2d. Also the lands of many other persons were under like proceedings and decrees aforesaid had, by virtue of said act, sold to the State, where the owners thereof had paid taxes which they supposed were on such lands of their own,

but which taxes so paid, owing to an erroneous description in the numbers of the same afterwards were ascertained to be on other lands than their own, and their lands sold to the State as aforesaid; and,

"Whereas, 3d. Said overdue tax act was a novel proceeding in this State that was productive of hardships in other respects, and it is but just to them that the owners of land at the time of such sale to the State, should have a limited time to redeem the same therefrom, without loss to the State, provided said lands shall not

have been sold by the State prior to any such application to redeem;

"Now, therefore...."

**Effective Dates.** Acts 1875, No. 77, § 53: effective on passage. Approved Feb. 25, 1875.

Acts 1883, No. 114, § 226: effective on passage.

Acts 1887, No. 92, § 58: effective on passage.

Acts 1935, No. 282, § 9: effective on passage.

Acts 1941, No. 64, § 6: effective on passage.

### 26-39-401. Penalty.

Any county clerk or other county officer designated pursuant to § 26-28-102(a) who fails to set up the settlement of the county collector setting forth the amount due the various funds on or before the fourth Monday of December of each year upon conviction is guilty of a violation punishable by a fine of one hundred dollars (\$100) or removal from office.

**History.** Acts 1935, No. 282, § 2; Pope's Dig., § 13904; Acts 1941, No. 64, § 1; 1981, No. 846, § 1; A.S.A. 1947, § 84-1410; Acts 2005, No. 1994, § 172; 2009, No. 721, § 3.

**Amendments.** The 2009 amendment inserted "or other county officer designated pursuant to § 26-28-102(a)" and substituted "upon conviction is" for "shall be."

### 26-39-402. Review by county court.

(a) All county collectors' settlements shall be made and filed with the county courts on or before the fourth Monday of December each year.

(b)(1) It is the duty of the county courts to pass upon the settlements of the county collectors and to approve, reject, or restate them on or before December 31 of each year.

(2) Failure of the county judge to so approve, reject, or restate the settlements of the county collector within this period of time shall constitute a misfeasance in office and shall be a violation punishable by a fine of one hundred dollars (\$100) or removal from office.

**History.** Acts 1935, No. 282, § 2; Pope's Dig., § 13903; Acts 1941, No. 64, § 1; 1981, No. 846, § 1; A.S.A. 1947, § 84-1410; Acts 2005, No. 1994, § 172.

### CASE NOTES

#### **Sureties.**

A cause of action cannot accrue against surety until final judgment fixing county

collector's liability has been entered. Fireman's Fund Ins. Co. v. Polk County, 260 Ark. 799, 543 S.W.2d 947 (1976).



**26-39-403. Approval or rejection.**

(a) If the tax settlement shall be found to be correct, the county court shall order the tax settlement spread in full upon the records of the county court.

(b)(1) The county clerk or other county officer designated pursuant to § 26-28-102(a) shall certify to the Auditor of State, without delay, the action of the county court on the tax settlement, whether approved or rejected.

(2) If rejected, the county clerk or other county officer designated pursuant to § 26-28-102(a) shall immediately proceed to restate the tax settlement and again submit it to the county court.

**History.** Acts 1883, No. 114, § 168, p. 199; 1887, No. 92, § 55, p. 143; C. & M. Dig., § 10125; Pope's Dig., § 13909; A.S.A. 1947, § 84-1411; Acts 2009, No. 721, § 6.

**Amendments.** The 2009 amendment inserted "or other county officer designated pursuant to § 26-28-102(a)" in (b)(1) and (b)(2), and made minor stylistic changes throughout the section.

**CASE NOTES**

**Cited:** Big Gum Drainage Dist. v. Fireman's Fund Ins. Co. v. Polk County, Crews, 158 Ark. 566, 250 S.W. 865 (1923); 260 Ark. 799, 543 S.W.2d 947 (1976).

**26-39-404. Settlement with county and county subdivisions.**

After the tax settlement made with the county collector by the county clerk or other county officer designated pursuant to § 26-28-102(a) has been examined and acted upon by the county court, as provided in § 26-39-402, the county collector shall make settlement with the county and its various subdivisions on or before December 30 of each year.

**History.** Acts 1941, No. 64, § 5; A.S.A. 1947, § 84-1412; Acts 2003, No. 295, § 10; 2009, No. 721, § 7.

**Amendments.** The 2009 amendment inserted "tax" and "or other county officer designated pursuant to § 26-28-102(a)."

**CASE NOTES**

**Cited:** Fireman's Fund Ins. Co. v. Polk County, 260 Ark. 799, 543 S.W.2d 947 (1976).

**26-39-405. [Repealed.]**

**Publisher's Notes.** This section, concerning mileage of collectors, was repealed by Acts 2003, No. 295, § 16. The section was derived from Acts 1875, No.

77, § 25, p. 167; C. & M. Dig., § 4592; Pope's Dig., § 5680; A.S.A. 1947, § 84-1413.

**26-39-406. Distribution to funds.**

All taxes collected and arising under any law of this state shall be distributed by the Auditor of State if in possession of state authority or if in possession of county authority by the county clerk or other county officer designated pursuant to § 26-28-102(a) to the several funds to which the taxes belong.

**History.** Acts 1883, No. 114, § 207, p. 199; C. & M. Dig., § 10178; Pope's Dig., § 13961; A.S.A. 1947, § 84-1414; Acts 2009, No. 721, § 4.

**Amendments.** The 2009 amendment

inserted "or other county officer designated pursuant to § 26-28-102(a)" and made minor stylistic and punctuation changes.

**26-39-407. [Repealed.]**

**Publisher's Notes.** This section, concerning quarterly distribution of money received from land redemptions, was repealed by Acts 1995, No. 232, § 11. The

section was derived from Acts 1935, No. 282, § 8; Pope's Dig., § 13906; A.S.A. 1947, § 84-1415.

**SUBCHAPTER 5 — FAILURE OF COUNTY COLLECTORS TO ACCOUNT****SECTION.**

26-39-501. Penalty for failing to pay county funds.

26-39-502. Penalty for failing to pay state funds.

**SECTION.**

26-39-503 — 26-39-509. [Repealed.]

**Preambles.** Acts 1887, No. 13 contained a preamble which read:

"Whereas, 1st. Lands have been sold to the State under proceedings purporting to have been had in the courts of this State by virtue of an Act of the General Assembly thereof entitled 'An Act to enforce the payment of Overdue Taxes,' approved March 12, 1881, when the taxes for the alleged nonpayment of which such lands were so sold under said proceedings and decrees of said courts, had been in fact paid prior to any such sales, proceedings or decrees of said courts; and,

"Whereas, 2d. Also the lands of many other persons were under like proceedings and decrees aforesaid had, by virtue of said act, sold to the State, where the owners thereof had paid taxes which they supposed were on such lands of their own,

but which taxes so paid, owing to an erroneous description in the numbers of the same afterwards were ascertained to be on other lands than their own, and their lands sold to the State as aforesaid; and,

"Whereas, 3d. Said overdue tax act was a novel proceeding in this State that was productive of hardships in other respects, and it is but just to them that the owners of land at the time of such sale to the State, should have a limited time to redeem the same therefrom, without loss to the State, provided said lands shall not have been sold by the State prior to any such application to redeem;

"Now, therefore...."

**Effective Dates.** Acts 1883, No. 114, § 226: effective on passage.

Acts 1887, No. 92, § 58: effective on passage.

**26-39-501. Penalty for failing to pay county funds.**

(a) Every county collector of the county revenue, having made settlement according to law of the county revenue received and collected by him or her, shall pay the amount found due from him or her into the county treasury, and the county treasurer shall give duplicate receipts therefor, one (1) of which shall be filed by the county collector in the office of the county clerk.

(b) Every county collector or county sheriff who shall fail to make payment of the amount due from him or her on settlement, in the time and manner prescribed in this section, shall forfeit and pay to the county the sum of five percent (5%) per month on the sum wrongfully withheld, to be computed from the time the payment ought to have been made until actual payment, which may be recovered by suit on his or her official bond.

**History.** Acts 1883, No. 114, §§ 189, 10152; Pope's Dig., §§ 13933, 13934; 190, p. 199; C. & M. Dig., §§ 10151, A.S.A. 1947, § 84-1416.

**CASE NOTES****Illegal Receipts.**

Illegal receipt of specific payments by county sheriff being within scope of this section, charge of five percent penalty was proper. *Thomas v. Williford*, 259 Ark. 354, 534 S.W.2d 2 (1976).

**Cited:** *Fireman's Fund Ins. Co. v. Polk County*, 260 Ark. 799, 543 S.W.2d 947 (1976).

**26-39-502. Penalty for failing to pay state funds.**

If any county collector and others bound by law to pay money directly into the State Treasury shall fail to pay the amount so found due into the State Treasury and produce the Treasurer of State's receipt to the Auditor of State therefor within fifteen (15) days after the settlement required in § 26-39-404, the delinquent county collector shall forfeit:

- (1) The commissions allowed him or her by law;
- (2) The sum of twenty-five percent (25%) on the amount; and
- (3) A penalty of five percent (5%) per month on the amount wrongfully withheld, to be computed from the time it ought to have been paid until actual payment. The Auditor of State shall charge the delinquent accordingly, and the amount of principal and forfeitures may be recovered as provided for in this subchapter.

**History.** Acts 1883, No. 114, § 171, p. 199; C. & M. Dig., § 10131; Pope's Dig., § 13915; A.S.A. 1947, § 84-1417.

**Cross References.** Time for bringing action by state to recover money, § 16-106-104.

**26-39-503 — 26-39-509. [Repealed.]**

**Publisher's Notes.** These sections, concerning distress warrant against collector, endorsement of warrant, lien on

property of collector, sale of lands and tenements, payment of money collected, fees of officer executing warrant, and re-



turn of surplus moneys, was repealed by Acts 2003, No. 295, § 17. The sections were derived from:

26-39-503. Acts 1883, No. 114, § 172, p. 199; 1887, No. 92, § 57, p. 143; C. & M. Dig., § 10132; Pope's Dig., § 13916; A.S.A. 1947, § 84-1418.

26-39-504. Acts 1883, No. 114, § 175, p. 199; C. & M. Dig., § 10135; Pope's Dig., § 13919; A.S.A. 1947, § 84-1421.

26-39-505. Acts 1883, No. 114, § 174, p. 199; C. & M. Dig., § 10134; Pope's Dig., § 13918; A.S.A. 1947, § 84-1420.

26-39-506. Acts 1883, No. 114, § 173, p. 199; C. & M. Dig., § 10133; Pope's Dig., § 13917; A.S.A. 1947, § 84-1419.

26-39-507. Acts 1883, No. 114, § 178, p. 199; C. & M. Dig., § 10138; Pope's Dig., § 13922; A.S.A. 1947, § 84-1424.

26-39-508. Acts 1883, No. 114, § 177, p. 199; C. & M. Dig., § 10137; Pope's Dig., § 13921; A.S.A. 1947, § 84-1423.

26-39-509. Acts 1883, No. 114, § 176, p. 199; C. & M. Dig., § 10136; Pope's Dig., § 13920; A.S.A. 1947, § 84-1422.

## CHAPTERS 40-49

[Reserved]

### *SUBTITLE 5. STATE TAXES*

## CHAPTER 50

### GENERAL PROVISIONS

#### SECTION.

26-50-101. Definitions.

26-50-102. Wholesaler to furnish list of retailers.

**Cross References.** No increase in tax except by election or vote of three-fourths of legislature, Ark. Const. Amend. 19 [Ark. Const., Art. 5, § 38].

**Effective Dates.** Acts 1949, No. 78, § 6: Feb. 11, 1949. Emergency clause provided: "It has been ascertained that the present enforcement of the collection of Gross Receipts taxes due this State has been hampered and delayed by reason of refusal of wholesalers to furnish requested information, and that the public institutions to which Gross Receipts and Use Taxes are allotted, are in dire need of such funds, therefore an emergency is hereby declared to exist, and that this Act is necessary for the preservation of the public peace, health and safety, and this Act shall be in full force and effect from and after its passage and approval."

Acts 1973, No. 182, §§ 9, 10: Jan. 1, 1973. Emergency clause provided: "It is hereby found and determined by the General Assembly that the present law relative to the taxation of banks and savings and loan associations is somewhat vague and indefinite, that such institutions should pay the same taxes as other business corporations in the State, and this Act is immediately necessary to clarify the laws with respect to the taxation of financial institutions and to assure that such institutions pay the same taxes as other business corporations. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval." Approved February 22, 1973.

**RESEARCH REFERENCES**

**ALR.** Consideration of tax consequences in distribution of marital property. 9 A.L.R.5th 568.

Property taxation of residential time-share or interval-ownership units. 80 A.L.R.4th 950.

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**26-50-101. Definitions.**

(a) As used in §§ 26-26-1501 — 26-26-1504, 26-51-303, 26-51-407, 26-51-408, 26-52-305, and 26-53-110, unless the context otherwise requires:

(1) "Business corporation" means a corporation incorporated under the Arkansas Business Corporation Act, § 4-26-101 et seq.;

(2) "Financial institution" means a state bank or national bank, a savings and loan association, or a building and loan association as defined in this section;

(3) "National bank" means a bank chartered under the banking laws of the United States;

(4) "Savings and loan association" or "building and loan association" means any financial institution or association established and operating under the authority of § 23-37-101 et seq., or § 23-37-706 and § 23-38-101 et seq., or under any other appropriate state or federal law; and

(5) "State bank" means a bank, trust company, or savings bank chartered under the banking laws of this state.

(b)(1) It is the purpose of §§ 26-26-1501 — 26-26-1504, 26-51-303, 26-51-407, 26-51-408, 26-52-305, and 26-53-110 to clarify the law relating to the taxation of state and national banks and savings and loan and building and loan associations chartered under state and federal law and to simplify and to broaden the tax base applicable to such financial institutions.

(2) It is the intent of §§ 26-26-1501 — 26-26-1504, 26-51-303, 26-51-407, 26-51-408, 26-52-305, and 26-53-110 to repeal the capital stock tax and, in lieu thereof, to tax state and national banks, savings and loan associations and building and loan associations, under the existing tax laws generally applicable to business corporations.

**History.** Acts 1973, No. 182, §§ 1, 2;  
A.S.A. 1947, §§ 84-487n, 84-2087.

**26-50-102. Wholesaler to furnish list of retailers.**

(a)(1) It shall be the duty of all persons, firms, and corporations, and all business establishments of every kind engaged in the wholesale business of selling merchandise in this state to furnish, upon the request in writing of the Director of the Department of Finance and Administration of this state, the names of any retailers or other persons to whom sales have been made, together with the amount of the sales

for any given period, to be used by the director or his or her agents for the purposes of collecting the gross receipts, use, or other tax as may be due this state, but for no other purpose.

(2) The information provided for shall be furnished to the director within thirty (30) days.

(3) The authority given in this subsection is in addition to any and all authority existing by reason of any statute of this state.

(b) Any wholesale concern selling merchandise in this state failing and refusing to give the information in writing, as requested by the director, is declared to be liable for any and all tax and penalty found to be due by the retailer for such period of time as is determined by the director in event the tax is not collectible from the retailer.

(c) The provisions of this section shall apply to out-of-state wholesalers, their agents, solicitors, salespersons, or collectors. Any person, firm, corporation, solicitor, salesperson, agent, or collector who fails, neglects, or refuses to give the information so requested, in addition to being liable for tax and penalty found due, shall be guilty of aiding in evasion of the payment of such tax and, upon conviction in any court of this state, shall be fined in any sum not less than fifty dollars (\$50.00) nor more than one thousand dollars (\$1,000) for each offense.

**History.** Acts 1949, No. 78, §§ 1-3;  
A.S.A. 1947, §§ 84-1920 — 84-1922.

## CHAPTER 51

### INCOME TAXES

#### SUBCHAPTER.

1. GENERAL PROVISIONS.
2. IMPOSITION OF TAX.
3. EXEMPTIONS AND REDUCED TAX RATES.
4. COMPUTATION OF TAX LIABILITY.
5. TAX CREDITS GENERALLY.
6. PROPERTY TAX CREDIT FOR SENIOR CITIZENS. [REPEALED.]
7. UNIFORM DIVISION OF INCOME FOR TAX PURPOSES ACT.
8. TAX RETURNS.
9. ARKANSAS INCOME TAX WITHHOLDING ACT OF 1965.
10. WATER RESOURCE CONSERVATION AND DEVELOPMENT INCENTIVES ACT.
11. DONATIONS OR SALES OF EQUIPMENT TO EDUCATIONAL INSTITUTIONS.
12. STEEL MILL TAX INCENTIVES.
13. WINNINGS WITHHOLDING ACT.
14. APPORTIONMENT AND ALLOCATION OF NET INCOME OF FINANCIAL INSTITUTIONS.
15. ARKANSAS PRIVATE WETLAND AND RIPARIAN ZONE CREATION, RESTORATION, AND CONSERVATION TAX CREDITS ACT.
16. YOUTH APPRENTICESHIP/WORK-BASED LEARNING PROGRAM TAX CREDIT.
17. LOW INCOME HOUSING TAX CREDIT.
18. SMALL BUSINESS CAPITAL FORMATION ACT.
19. EMPLOYEE TUITION REIMBURSEMENT TAX CREDIT.
20. MANUFACTURER'S INVESTMENT TAX CREDIT ACT.
21. GIFT OF LIFE ACT.
22. ARKANSAS HISTORIC REHABILITATION INCOME TAX CREDIT ACT.
23. LOTTERY WITHHOLDING ACT.



## SUBCHAPTER

24. ARKANSAS CENTRAL BUSINESS IMPROVEMENT DISTRICT REHABILITATION AND DEVELOPMENT INVESTMENT TAX CREDIT ACT. [EFFECTIVE IF CONTINGENCY IN § 26-51-2412 IS MET]..
25. INCOME TAX REFUND CHECK-OFF AND CONTRIBUTION PROGRAMS.

**Effective Dates.** Acts 1997, No. 328, § 11, provided: "This Act shall be effective on and after November 15, 1998 unless a constitutional amendment or initiated act shall be approved or an act of the General Assembly shall become law before that date which exempts food, either wholly or partially, from the Arkansas gross receipts tax. If a constitutional amendment, initiated act, or act of the General Assembly exempting food is not approved, then the provisions of Section 1, 2, 3, 4, 6, 7, and 8 of this Act shall be effective for tax years beginning on and after January 1, 1998; the provisions of Section 5 of this Act shall be effective as provided in that section; and the provisions of Section 9 of this Act

shall be effective as provided in Section 10."

Acts 1997, No. 328, § 12, provided: "The withholding tables prescribed by the Director of the Department of Finance and Administration pursuant to Ark. Code Ann. § 26-51-907 shall not be amended for tax year 1998 to reflect the changes adopted by this Act. If this Act becomes effective on November 15, 1998, the effect of the various provisions of this Act for tax year 1998 shall be reflected on the income tax return filed for that year. For all subsequent years, the Director shall adjust the withholding tables as otherwise required by law."

## CASE NOTES

**Cited:** *Cheney v. East Tex. Motor Freight, Inc.*, 233 Ark. 675, 346 S.W.2d 513 (1961); *Jefferson Coop. Gin, Inc. v. Milam*, 255 Ark. 479, 500 S.W.2d 932 (1973); *Shinn v. Heath*, 259 Ark. 577, 535

S.W.2d 57 (1976); *Mountain Home v. Drake*, 281 Ark. 336, 663 S.W.2d 738 (1984); *Land O'Frost, Inc. v. Pledger*, 308 Ark. 208, 823 S.W.2d 887 (1992).

## SUBCHAPTER 1 — GENERAL PROVISIONS

## SECTION.

- 26-51-101. Title.
- 26-51-102. Definitions.
- 26-51-103. Captions not to affect interpretation.
- 26-51-104. Administration.

## SECTION.

- 26-51-105. Income tax director, officers, agents, and employees.
- 26-51-106. Publication of statistics.
- 26-51-107. Distribution of tax.

**Preambles.** Acts 1929, No. 118, contained a preamble which read: "Whereas, this State has been neglectful of its Wards in the Charitable Institutions, which is a disgrace to the people of a Great Commonwealth, and it is imperative that additional Revenue should be provided to correct the fearful conditions which now exist; and

"Whereas, an equalization Fund should be provided to give equal Educational op-

portunities to the Boys and Girls of our Rural Communities; and

"Whereas, Agricultural and Industrial development is now being retarded because of a policy to secure practically all of the Revenue from an Ad Valorem Tax, thus penalizing and discouraging ownership of property, while many who enjoy the benefits of Government and have large incomes, pay almost nothing to support the Government;

Therefore...."

**Effective Dates.** Acts 1929, No. 118, § 44: approved Mar. 9, 1929. Emergency clause provided: "It is hereby ascertained and declared that the Hospital for Nervous Diseases is inadequate to properly care for all who should be confined therein, to the end there are many persons of unsound mind at large, who are a menace to the public safety, and that said Hospital as now equipped is inadequate to restrain those insane persons who are confined therein, so that there is danger of their escaping at any time and imperiling the safety of the public; that there are hundreds and hundreds of persons desiring to enter the Tuberculosis Sanitarium who cannot now be accommodated there, because that institution has neither room, beds nor facilities for additional people, as a result said consumptives at large are spreading the disease amongst their families and friends; that the funds to be raised by this Act will be used for the better care of the charitable wards of this State and to provide better for the rural schools of this State; and it is therefore ascertained and declared that it is necessary for the public peace, health and safety that this Act go into immediate operation, and accordingly it is provided that this act shall take effect and be in force from and after its passage."

Acts 1947, No. 135, § 9: approved Mar. 3, 1947. Emergency clause provided: "It has been found and is hereby declared by the General Assembly of the State of Arkansas that existing laws providing for the distribution of state revenues are such that a moderate diminution of certain of the revenues would have the effect of curtailing the activities of certain necessary agencies of the State Government, and that only the provisions of this Act

will correct a situation which otherwise may deprive the citizens of this State from receiving the benefits which the operation of the State Government contemplates. Therefore, an emergency is hereby declared to exist, and this act being necessary for the preservation of the public peace, health and safety shall take effect and be in full force from and after its passage."

Acts 1993, No. 785, § 24: Mar. 30, 1993. Emergency clause provided: "It is hereby found and determined that certain changes are necessary to the Arkansas income tax laws; that these changes are necessary immediately in order to maintain the efficient administration of the Arkansas income tax laws; and that this act is necessary to effectuate that purpose. Therefore, an emergency is hereby declared to exist and this act being necessary for the preservation of public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1993, No. 785, § 20: amendments to subchapters 1, 4, 5, 9, and 10 effective for taxable years beginning on and after January 1, 1993.

Acts 1995, No. 1160, § 46: Apr. 11, 1995. Emergency clause provided: "It is hereby found and determined by the General Assembly that certain changes are necessary to the Arkansas tax laws; that these changes are necessary immediately in order to maintain the efficient administration of the Arkansas income tax laws; and that this act is necessary to effectuate that purpose. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

## RESEARCH REFERENCES

**Am. Jur.** 71 Am. Jur. 2d, State Tax., § 443 et seq.

**Ark. L. Rev.** Income Tax Amendments, 7 Ark. L. Rev. 346.

**C.J.S.** 85 C.J.S., Tax., § 1089 et seq.

## 26-51-101. Title.

This act shall be known and may be cited as the "Income Tax Act of 1929".

**History.** Acts 1929, No. 118, Art. 1, § 1; Pope's Dig., § 14024; A.S.A. 1947, § 84-2001.

**Meaning of "Income Tax Act of 1929".** Acts 1929, No. 118, codified as §§ 26-51-101 — 26-51-107, 26-51-201 —

26-51-204, 26-51-303, 26-51-401 — 26-51-406, 26-51-410 — 26-51-412, 26-51-415 — 26-51-417, 26-51-423 — 26-51-431, 26-51-436, 26-51-501, 26-51-801 — 26-51-804, 26-51-806 — 26-51-809, and 26-51-811 — 26-51-815.

## CASE NOTES

### Constitutionality.

The income tax imposed by this chapter is not a property tax, and this chapter is not violative of the equality and uniformity clause of the Arkansas Constitution. *Stanley v. Gates*, 179 Ark. 886, 19 S.W.2d 1000 (1929).

Tax on net income of domestic corporations is not discriminatory in imposing tax on income derived from stocks owned in other corporations engaged in business in another state. *Wiseman v. Interstate Pub. Serv. Co.*, 191 Ark. 255, 85 S.W.2d 700 (1935).

This chapter held unconstitutional and void insofar as it attempts to tax a domestic corporation's income from its plants located outside the state. *McCarroll v. Gregory-Robinson-Speas, Inc.*, 198 Ark. 235, 129 S.W.2d 254, 122 A.L.R. 977 (1939).

This chapter is not invalid on ground that a Senate amendment thereto was not

concurrent in by the House, since Senate Journal showing the adoption of the amendment was silent as to its withdrawal or any action receding therefrom and minutes and record of the Secretary of the Senate recited that amendment had been withdrawn. *Hardin v. Ft. Smith Couch & Bedding Co.*, 202 Ark. 814, 152 S.W.2d 1015 (1941).

Act 1931, No. 220, relieving domestic corporations doing business entirely outside the state of Arkansas from the payment of any income tax to the state, when read in connection with the General Income Tax Act of 1929, which imposes an income tax upon a domestic corporation doing business both within and outside the state on income derived from sources outside Arkansas, denied to such domestic corporation the equal protection of the laws and amounted to the taking of its property without due process. *Cheney v. Stephens, Inc.*, 231 Ark. 541, 330 S.W.2d 949 (1960).

## 26-51-102. Definitions.

As used in this chapter, unless the context otherwise requires:

(1) "Corporation" includes joint-stock companies or associations and insurance companies;

(2) "Director" means the Director of the Department of Finance and Administration;

(3) "Domestic," when applied to any corporation or association, including a partnership, means created or organized in the State of Arkansas;

(4) "Fiduciary" means a guardian, trustee, executor, administrator, receiver, conservator, or any person, whether individual or corporate, acting in any fiduciary capacity for any person, trust, or estate;

(5) "Fiscal year" means an accounting period of twelve (12) months ending on the last day of any month other than December;



(6) "Foreign", when applied to any corporation or association, including a partnership, means created or organized outside of the State of Arkansas;

(7) "Foreign country" means any jurisdiction other than one embraced within the United States;

(8) "Income year" means "taxable year" as defined in this section;

(9) "Individual" means a natural person;

(10) "Nonresident", when used in connection with the Income Tax Act of 1929, shall apply to any natural person whose domicile is without the State of Arkansas and who maintains a place of abode without this state and spends in the aggregate more than six (6) months of the taxable year without this state;

(11) "Paid", for the purposes of the deductions under the Income Tax Act of 1929, means "paid or accrued" or "paid or incurred", and the words "paid or accrued" or "paid or incurred" shall be construed according to the methods of accounting upon the basis of which the net income is computed under the Income Tax Act of 1929;

(12) "Person" includes individuals, fiduciaries, partnerships, limited liability companies, and corporations;

(13) "Received", for the purpose of computation of the net income under the Income Tax Act of 1929, means "received or accrued", and the words "received or accrued" shall be construed according to the method of accounting upon the basis of which the net income is computed under the Income Tax Act of 1929;

(14) "Resident" means natural persons and includes, for the purpose of determining liability for the tax imposed by the Income Tax Act of 1929 upon or with reference to the income of any taxable year, any person domiciled in the State of Arkansas and any other person who maintains a permanent place of abode within this state and spends in the aggregate more than six (6) months of the taxable year within this state;

(15) "Tax year" means "taxable year" as defined in this section;

(16) "Taxpayer" includes any individual, fiduciary, or corporation subject to the tax imposed by the Income Tax Act of 1929;

(17)(A) "Taxable year" means the calendar year, or the fiscal year ending during such calendar year, upon the basis of which taxable income is computed.

(B) "Taxable year", in the case of a return made for a fractional part of a year, means the period for which such return is made;

(18) "United States," when used in a geographical sense, includes the states, the District of Columbia, and the possessions of the United States; and

(19) "Year" means "taxable year".

**History.** Acts 1929, No. 118, Art. 1, § 2; Pope's Dig., § 14025; A.S.A. 1947, § 84-2002; Acts 1993, No. 785, §§ 2-5; 1995, No. 1160, § 17.

**Meaning of "Income Tax Act of 1929".** See note to § 26-51-101.

## CASE NOTES

## ANALYSIS

Fiscal Year.  
Paid.  
Resident.

**Fiscal Year.**

Under the income tax law, a fiscal year must begin in one year and end in the next succeeding year, so there can be no fiscal year wholly within a calendar year. *Cook v. Arkansas State Rice Milling Co.*, 213 Ark. 396, 210 S.W.2d 511 (1948).

**Paid.**

The word "received," for the purpose of computing net income, means either "received" or "accrued," depending on whether the taxpayer is on a cash basis or an accrual basis. *F & M Bank v. Skelton*, 266 Ark. 680, 587 S.W.2d 561 (1979).

**Resident.**

A congressman is presumed to have been an inhabitant of the state when elected to congress from Arkansas; his

legal domicile is in Arkansas, although he sojourns in Washington during the year, and he is liable for income taxes to the State of Arkansas. *Cravens v. Cook*, 212 Ark. 71, 204 S.W.2d 909 (1947).

Although taxpayers were physically located outside Arkansas, they were residents of Arkansas, since numerous documents, such as federal income tax returns prepared by them, listed Arkansas as their address, they had Arkansas driver's licenses, they owned a house in Arkansas that they did not rent but later sold, and they had registered to vote in Arkansas in 1970, declaring that Arkansas had been their residence for the eight previous years and that they had lived at no place outside of Arkansas with the intent of staying there. *Shinn v. Heath*, 259 Ark. 577, 535 S.W.2d 57 (1976).

**Cited:** *Hardin v. Ft. Smith Couch & Bedding Co.*, 202 Ark. 814, 152 S.W.2d 1015 (1941); *Shinn v. Heath*, 259 Ark. 577, 535 S.W.2d 57 (1976).

**26-51-103. Captions not to affect interpretation.**

No caption of any section or set of sections shall in any way affect the interpretation of the Income Tax Act of 1929 or any part thereof.

**History.** Acts 1929, No. 118, Art. 9, § 42; Pope's Dig., § 14065; A.S.A. 1947, § 84-2048n.

**Meaning of "Income Tax Act of 1929".** See note to § 26-51-101.

**Cross References.** Code classification and organization not to be construed — Notes, headings, etc., not part of law, § 1-2-115.

**26-51-104. Administration.**

The Director of the Department of Finance and Administration shall administer and enforce the tax imposed by the Income Tax Act of 1929.

**History.** Acts 1929, No. 118, Art. 8, § 33; Pope's Dig., § 14056; A.S.A. 1947, § 84-2039.

**Meaning of "Income Tax Act of 1929".** See note to § 26-51-101.

**26-51-105. Income tax director, officers, agents, and employees.**

(a) The Director of the Department of Finance and Administration, with the approval of the Governor, may appoint and remove a person to be known as the Income Tax Director who, under the Director of the Department of Finance and Administration's supervision, shall have the direction and control of the assessment and collection of the taxes imposed by the Income Tax Act of 1929.

(b) The Income Tax Director, with the approval of the Governor, may appoint such other officers, agents, deputies, clerks, and employees as he or she may deem necessary, such appointees to have the duties and powers which the Director of the Department of Finance and Administration may from time to time prescribe.

(c) The salaries of all such officers, agents, and employees shall be fixed by the Director of the Department of Finance and Administration not to exceed the amounts appropriated by the General Assembly; and the Director of the Department of Finance and Administration and such officers, agents, and employees shall be allowed reasonable and necessary traveling and other expenses incurred in the performance of their duties not to exceed the amounts appropriated by the General Assembly.

(d) The Director of the Department of Finance and Administration may require such of the officers, agents, and employees as he or she may designate to give bond for the faithful performance of their duties and in such sum and with such sureties as he or she may determine, and all premiums on these bonds shall be paid by the Director of the Department of Finance and Administration out of moneys appropriated for the purposes of the Income Tax Act of 1929.

**History.** Acts 1929, No. 118, Art. 8, § 37; Pope's Dig., § 14060; A.S.A. 1947, § 84-2043.

**A.C.R.C. Notes.** The operation of subsection (d) of this section was suspended by adoption of a self-insured fidelity bond program for public officers, officials and employees, effective July 20, 1987, pursuant to § 21-2-701 et seq. Subsection (d) of

this section may again become effective upon cessation of coverage under that program. See § 21-2-703.

**Publisher's Notes.** Part of this section may be superseded by the Uniform Classification and Compensation Act, § 21-5-201 et seq., with regard to the Governor.

**Meaning of "Income Tax Act of 1929".** See note to § 26-51-101.

## 26-51-106. Publication of statistics.

The Director of the Department of Finance and Administration shall prepare and publish annually statistics reasonably available, with respect to the operation of the Income Tax Act of 1929, including amounts collected, classifications of taxpayers, income, exemptions, and such other facts as are deemed pertinent and valuable.

**History.** Acts 1929, No. 118, Art. 8, § 39; Pope's Dig., § 14062; A.S.A. 1947, § 84-2045.

**Meaning of "Income Tax Act of 1929".** See note to § 26-51-101.

## 26-51-107. Distribution of tax.

(a) All taxes, interest, penalties, and costs collected under the provisions of the Income Tax Act of 1929 shall be general revenues and shall be deposited into the State Treasury to the credit of the State Apportionment Fund.

(b) The Treasurer of State, on or before the fifth of the month next following the month during which the revenues shall have been



received by him or her, shall allocate and transfer them to the various State Treasury funds in the proportions to each as provided by law, after first transferring to the General Revenue Fund Account an amount equivalent to the cost of collection and other pro rata charges as also provided by law.

**History.** Acts 1929, No. 118, Art. 9, § 41; Pope's Dig., § 14064; Acts 1947, No. 135, § 6; A.S.A. 1947, § 84-2047.

**Meaning of "Income Tax Act of**

**1929".** See note to § 26-51-101.

**Cross References.** General Revenue Fund Account, § 19-5-202.

State Apportionment Fund, § 19-5-201.

## CASE NOTES

**Cited:** Stanley v. Gates, 179 Ark. 886, 19 S.W.2d 1000 (1929); Collins v. Humphrey, 181 Ark. 609, 27 S.W.2d 102 (1930).

## SUBCHAPTER 2 — IMPOSITION OF TAX

### SECTION.

- 26-51-201. Individuals, trusts, and estates.
- 26-51-202. Nonresidents.
- 26-51-203. Fiduciaries.
- 26-51-204. Railroads and public utilities.

### SECTION.

- 26-51-205. Corporations — Work Force 2000 Development Fund.
- 26-51-206. Commercial ventures by churches — Exceptions.
- 26-51-207. Income tax surcharge.

**Cross References.** Additional gross receipts tax in lieu of individual income tax in border cities and towns, § 26-52-601 et seq.

**Preambles.** Acts 1929, No. 118, contained a preamble which read: "Whereas, this State has been neglectful of its Wards in the Charitable Institutions, which is a disgrace to the people of a Great Commonwealth, and it is imperative that additional Revenue should be provided to correct the fearful conditions which now exist; and

"Whereas, an equalization Fund should be provided to give equal Educational opportunities to the Boys and Girls of our Rural Communities; and

"Whereas, Agricultural and Industrial development is now being retarded because of a policy to secure practically all of the Revenue from an Ad Valorem Tax, thus penalizing and discouraging ownership of property, while many who enjoy the benefits of Government and have large incomes, pay almost nothing to support the Government;

"Therefore...."

**Effective Dates.** Acts 1929, No. 118,

§ 44: Mar. 9, 1929. Emergency clause provided: "It is hereby ascertained and declared that the Hospital for Nervous Diseases is inadequate to properly care for all who should be confined therein, to the end there are many persons of unsound mind at large, who are a menace to the public safety, and that said Hospital as now equipped is inadequate to restrain those insane persons who are confined therein, so that there is danger of their escaping at any time and imperil the safety of the public; that there are hundreds and hundreds of persons desiring to enter the Tuberculosis Sanitarium who cannot now be accommodated there, because that institution has neither room, beds nor facilities for additional people, as a result said consumptives at large are spreading the disease amongst their families and friends; that the funds to be raised by this Act will be used for the better care of the charitable wards of this State and to provide better for the rural schools of this State; and it is therefore ascertained and declared that it is necessary for the public peace, health and safety that this Act go into immediate operation, and accordingly

it is provided that this act shall take effect and be in force from and after its passage.”

Acts 1941, No. 129, § 8: approved Mar. 11, 1941. Emergency clause provided: “Because of the various social problems caused by the failure of the State to provide adequate relief for its aged citizens, and it appearing that there is a dire need for additional funds to meet the requirements of the Social Security Act and give additional revenue to this State and because the old folks in this State are suffering by reason of the failure of the State to secure funds with which to pay Old Age Pensions, an emergency is hereby found to exist and is so declared by the Legislature of Arkansas; that this Act being necessary for the immediate preservation of the public peace, health and safety, shall be in full force and effect from and after its passage.”

Acts 1947, No. 135, § 9: approved Mar. 3, 1947. Emergency clause provided: “It has been found and is hereby declared by the General Assembly of the State of Arkansas that existing laws providing for the distribution of state revenues are such that a moderate diminution of certain of the revenues would have the effect of curtailing the activities of certain necessary agencies of the State Government, and that only the provisions of this Act will correct a situation which otherwise may deprive the citizens of this State from receiving the benefits which the operation of the State Government contemplates. Therefore, an emergency is hereby declared to exist, and this act being necessary for the preservation of the public peace, health and safety shall take effect and be in full force from and after its passage.”

Acts 1967, No. 46, § 5: Feb. 7, 1967. Emergency clause provided: “The General Assembly hereby finds and determines that there are many banks and financial institutions in this state that transact substantial trust business involving out-of-state settlors and out-of-state beneficiaries, that such are an integral part of the business of said institutions, that to require the out-of-state beneficiaries to pay Arkansas income tax on income of such in-state trust earned from out-of-state sources would seriously handicap Arkansas financial institutions transacting a substantial trust business and would make it highly unprofitable for out-of-

state settlors or testators to appoint an Arkansas trustee of such trusts, and that under present Arkansas law such out-of-state beneficiaries would be required to pay income taxes on any income derived from such a trust twice. Therefore, an emergency is hereby declared to exist and this Act being immediately necessary for the immediate preservation of the public peace, health and safety, shall be in effect from the date of its passage and approval.”

Acts 1969, No. 392, § 6: Apr. 11, 1969. Emergency clause provided: “The General Assembly finds that the State of Arkansas is in immediate need of additional funds for general revenue purposes. Accordingly, an emergency is declared to exist, and this act, being necessary for the preservation of the public health, peace, and safety, shall be effective from and after its passage and approval.”

Acts 1971, No. 221, § 2: effective for all income tax years beginning on or after Jan. 1, 1971.

Acts 1973, No. 215, § 5: Mar. 2, 1973. Emergency clause provided: “The General Assembly hereby finds and determines that there are many banks and financial institutions in this State that transact substantial trust business involving out-of-state settlors and out-of-state beneficiaries, that such are an integral part of the business of said institutions, that to require the out-of-state beneficiaries to pay Arkansas income tax on income of such in-state trust earned from out-of-state sources would seriously handicap Arkansas financial institutions transacting a substantial trust business and would make it highly unprofitable for out-of-state settlors or testators to appoint an Arkansas trustee of such trusts, and that under present Arkansas law such out-of-state beneficiaries would be required to pay income taxes on any income derived from such a trust twice. Therefore, an emergency is hereby declared to exist and this Act being immediately necessary for the immediate preservation of the public peace, health and safety, shall be in effect from the date of its passage and approval.”

Acts 1987, No. 1040, § 7: Apr. 14, 1987. Emergency clause provided: “It is hereby found and determined by the General Assembly that many churches have engaged in the practice of investing in real and personal property, or have received donations of commercial or rental property

which is not now assessed for ad valorem tax purposes and are not paying tax thereon as required by law, thereby depriving the local taxing units of thousands of dollars of much needed revenues; that under the Arkansas Constitution of 1874, Article 16, Sections 5 and 6, such property is not exempt from the provisions of the ad valorem property tax; that in many instances such churches do not report for Arkansas Income Tax purposes income derived from investments or profits derived from rental income or other commercial or business activities and do not pay taxes thereon; that this reduces the amount of revenues available for funding of State services; and that only by the immediate passage of this Act can this situation be remedied. Therefore, an emergency is hereby declared to exist, and this Act being necessary for the immediate preservation of the public peace, health, and safety, shall be in full force and effect from and after its passage and approval."

Acts 1991, No. 1052, § 5, provided: "This act shall be effective for income years beginning on and after January 1, 1991."

Acts 1991, No. 1052, § 9: Apr. 9, 1991. Emergency clause provided: "It is hereby found and determined by the General Assembly that additional funds are necessary to provide higher quality educational program which are accessible by all segments of the population in this state; that recent studies have shown that in the year 2000, workers must have a minimum of fourteen (14) years of education to function in the work force; that the state is in desperate need of training, retraining and upgrading the work force; that this act will provide the funding necessary to provide every citizen with an opportunity to participate in vocational-technical training or college transfer programs; and that it is necessary for this act to become effective immediately to provide the funding needed for these programs as soon as possible. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health, and safety shall be in full force and effect from and after its passage and approval."

Acts 1997, No. 171, § 6: Feb. 14, 1997. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas, that the provi-

sions of this Act are of critical importance to the stability of the educational programs funded from the Educational Excellence Trust Fund and the workforce development and training programs funded from the Workforce 2000 Development Fund, the same being an appropriate use of the state's resources. Therefore an emergency is declared to exist and this Act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

Acts 1997, No. 328, § 11, effective on and after November 15, 1998 unless a constitutional amendment or initiated act shall be approved or an act of the General Assembly shall become law before that date which exempts food, either wholly or partially, from the Arkansas gross receipts tax. If a constitutional amendment, initiated act, or act of the General Assembly exempting food is not approved, then the provisions of Section 1, 2, 3, 4, 6, 7, and 8 of this Act shall be effective for tax years beginning on and after January 1, 1998; the provisions of Section 5 of this Act shall be effective as provided in that section; and the provisions of Section 9 of this Act shall be effective as provided in Section 10.

Acts 1999, No. 1315, § 8: July 1, 1999. Emergency clause provided: "It is hereby found and determined by the Eighty-second General Assembly that the changes required by this act must take effect at the beginning of the state fiscal year and not to do so will disrupt the flow of funds for vocational education. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on July 1, 1999."

Acts 2003 (1st Ex. Sess.), No. 38, § 4: May 8, 2003. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that revenue available for the support of necessary state services has declined sig-



nificantly as a result of the nationwide economic slowdown; that without additional revenue some state services will be reduced or eliminated; that some Arkansas residents will suffer as a result of service reductions or cuts; and that this bill will provide the necessary revenue to avoid state service reductions or cuts. Therefore, an emergency is declared to exist and this act being immediately nec-

essary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

### RESEARCH REFERENCES

**Am. Jur.** 71 Am. Jur. 2d, State Tax., § 483 et seq.  
**Ark. L. Rev.** Taxation — Limits of State

Income Taxation upon Nonresidents, 3 Ark. L. Rev. 478.  
**C.J.S.** 85 C.J.S., Tax., § 1090 et seq.

### CASE NOTES

#### Constitutionality.

Acts 1929, No. 118, § 4, relating to income received in 1928, held constitu-

tional. *Stanley v. Gates*, 179 Ark. 886, 19 S.W.2d 1000 (1929); *Collins v. Humphrey*, 181 Ark. 609, 27 S.W.2d 102 (1930).

## 26-51-201. Individuals, trusts, and estates.

(a) A tax is imposed upon, and with respect to, the entire income of every resident, individual, trust, or estate. The tax shall be levied, collected, and paid annually upon the entire net income as defined and computed in this chapter at the following rates, giving effect to the tax credits provided hereafter, in the manner set forth:

(1) On the first two thousand nine hundred ninety-nine dollars (\$2,999) of net income or any part thereof, one percent (1%);

(2) On the next three thousand dollars (\$3,000) of net income or any part thereof, two and one-half percent (2½%);

(3) On the next three thousand dollars (\$3,000) of net income or any part thereof, three and one-half percent (3½%);

(4) On the next six thousand dollars (\$6,000) of net income or any part thereof, four and one-half percent (4½%);

(5) On the next ten thousand dollars (\$10,000) of net income or any part thereof, six percent (6%); and

(6) On net income of twenty-five thousand dollars (\$25,000) and above, seven percent (7%).

(b) However, no state income tax shall be due this state from a trust or estate created by a nonresident donor, trustor, or settlor, or by a nonresident testator even though administered by a resident trustee or personal representative except on income derived from:

(1) Lands situated in this state, including gains from any sale thereof;

(2) Any interest in lands situated in this state, including, without limitation, chattels real, including gains from any sale thereof;

(3) Tangible personal property located in Arkansas, including gains from any sale thereof; and

(4) Unincorporated businesses domiciled in Arkansas.

(c) No income tax shall be due the State of Arkansas from a nonresident beneficiary on income received from a trust being administered by a resident trustee except on income derived by the trust from:

(1) Lands situated in this state, including gains from any sale thereof;

(2) Any interest in lands situated in this state, including, without limitation, chattels real, including gains from any sale thereof;

(3) Tangible personal property located in Arkansas, including gains from any sale thereof; and

(4) Unincorporated businesses domiciled in Arkansas.

(d)(1) Not later than December 15 of 1998, and each subsequent calendar year, the Director of the Department of Finance and Administration shall prescribe a table which shall apply in lieu of the table contained in subsection (a) of this section with respect to taxable years beginning in the succeeding calendar year. The Director of the Department of Finance and Administration shall increase the minimum and maximum dollar amounts for each rate bracket, rounding to the nearest one hundred dollars (\$100), for which a tax is imposed under such table by the cost-of-living adjustment for such calendar year and by not changing the rate applicable to any rate bracket as adjusted. The yearly cost-of-living adjustment increase in each rate bracket as provided in subdivision (d)(2) of this section shall apply to the brackets as contained in subsection (a) of this section as in effect on January 1, 1998.

(2) For purposes of subdivision (d)(1) of this section, the cost-of-living adjustment for any calendar year is the percentage, if any, by which the CPI for the calendar year preceding the taxable year exceeds the CPI for the calendar year 1997, not to exceed three percent (3%). The CPI for any calendar year is the average of the Consumer Price Index as of the close of the twelve-month period ending on August 31 of such calendar year. "Consumer Price Index" means the last Consumer Price Index for All Urban Consumers published by the United States Department of Labor.

(3) The new tables, as adjusted, shall apply for tax returns filed for taxable year 1999 and thereafter, and shall be used by the director in preparing the income tax withholding tables pursuant to § 26-51-907.

**History.** Acts 1929, No. 118, Art. 2, § 3; Pope's Dig., § 14026; Acts 1957, No. 20, § 1; 1961, No. 34, § 1; 1967, No. 46, § 1; 1971, No. 221, § 1; 1973, No. 215, §§ 1, 2; A.S.A. 1947, § 84-2003; Acts 1997, No. 328, § 5.

**A.C.R.C. Notes.** The adjusted rate brackets for subsection (a) of this section are available from the Individual Income Tax Section of the Department of Finance and Administration.

## CASE NOTES

## ANALYSIS

Applicability.  
Federal Reservations.  
Partnerships.

**Applicability.**

This section is applicable to the entire income of every resident of Arkansas, regardless of the source of his income, whether derived from inside or outside the state. *Morgan v. Cook*, 211 Ark. 755, 202 S.W.2d 355 (1947).

This section does not exempt income earned outside the state. *Morgan v. Cook*, 211 Ark. 755, 202 S.W.2d 355 (1947).

**Federal Reservations.**

Tax on incomes levied uniformly against all citizens could extend to lessee of personalty on federal reservation, since state income tax, although classified as an excise, is treated by the courts as having many of the characteristics of a property tax. *Superior Bath House Co. v. McCarroll*, 200 Ark. 233, 139 S.W.2d 378 (1940),

aff'd, 312 U.S. 176, 61 S. Ct. 503, 85 L. Ed. 721 (1941), overruled in part, *Footte's Dixie Dandy, Inc. v. McHenry*, 270 Ark. 816, 607 S.W.2d 323, 21 A.L.R.4th 565 (1980).

Hot Springs Reservation of the federal government is within the state for purpose of taxation. *Superior Bath House Co. v. McCarroll*, 200 Ark. 233, 139 S.W.2d 378 (1940), aff'd, 312 U.S. 176, 61 S. Ct. 503, 85 L. Ed. 721 (1941), overruled in part, *Footte's Dixie Dandy, Inc. v. McHenry*, 270 Ark. 816, 607 S.W.2d 323, 21 A.L.R.4th 565 (1980).

**Partnerships.**

An Arkansas resident partner of an out-of-state partnership owes income tax on all income received from any source while residing in Arkansas, subject to the double taxation relief provided by § 26-51-504. *Collins v. Skelton*, 256 Ark. 955, 512 S.W.2d 542 (1974).

**Cited:** *Shinn v. Heath*, 259 Ark. 577, 535 S.W.2d 57 (1976); *Weiss v. McFadden*, 353 Ark. 868, 120 S.W.3d 545 (2003).

**26-51-202. Nonresidents.**

(a) A tax is imposed and shall be assessed, levied, collected, and paid annually at the rates specified in § 26-51-201 upon and with respect to the entire net income as defined in this chapter, except as provided in this section, from all property owned and from every business, trade, or occupation carried on in this state by individuals, corporations, partnerships, trusts, or estates not residents of the State of Arkansas.

(b)(1) Each nonresident as defined in § 26-51-102 shall file income tax returns with the State of Arkansas and pay the tax without distinction, or incident to the laws of the nonresident's resident state.

(2) It is the specific intention of the General Assembly that the tax shall be collected from property owned and from the conduct of every business, trade, or occupation, whether or not the individuals, corporations, partnerships, trusts, or estates are qualified to do business in the State of Arkansas and whether or not such business, trade, or occupation shall be conducted in interstate commerce.

(c) However, the payment of the tax shall be based upon net income properly allocated as net income arising from the ownership of property and the conduct of a business, trade, or occupation in the State of Arkansas.

(d) Additionally, no income tax shall be due the State of Arkansas from a nonresident beneficiary on income received from a trust or estate being administered by a resident trustee or personal representative except on income derived by the trust or estate from:



(1) Lands situated in this state, including gains from any sale of the lands situated in this state;

(2) Any interest in land situated in this state, including, without limitation, chattels real, including gains from any sale of an interest in land situated in this state;

(3) Tangible personal property located in Arkansas, including gains from any sale of the tangible personal property located in Arkansas; and

(4) Unincorporated businesses domiciled in Arkansas.

(e)(1) No income tax shall be due the State of Arkansas from a nonresident partner with respect to that partner's distributive share of dividends, interest, or gains and losses from qualifying investment securities owned by an investment partnership, whether or not the partnership has a usual place of business located in this state.

(2) As used in this subsection:

(A) "Investment partnership" means a partnership that meets both of the following requirements:

(i) No less than ninety percent (90%) of the value of the partnership's total assets consists of qualifying investment securities and office space and equipment reasonably necessary to carry on its activities as an investment partnership; and

(ii) No less than ninety percent (90%) of its gross income consists of interest, dividends, and gains from the sale or exchange of qualifying investment securities; and

(B)(i) "Qualifying investment securities" includes all of the following:

(a) Common stock, including preferred or debt securities convertible into common stock, and preferred stock;

(b) Bonds, debentures, and other debt securities;

(c) Deposits and any other obligations of banks and other financial institutions;

(d) Stock and bond index securities, futures contracts, options on securities, and other similar financial securities and instruments; and

(e) Other similar or related financial or investment contracts, instruments, or securities.

(ii) "Qualifying investment securities" shall not include an interest in a partnership unless that partnership is itself an investment partnership.

(3)(A) The provisions of subdivision (e)(1) of this section shall not apply to income derived from investment activity that is interrelated with any trade or business activity of the nonresident or an entity in which the nonresident owns an interest in this state, whose primary activities are separate and distinct from the acts of acquiring, managing, or disposing of qualified investment securities, or if those securities were acquired with working capital of a trade or business activity conducted in this state in which the nonresident owns an interest.

(B) Likewise, the provisions of subdivision (e)(1) of this section shall not apply to corporate partners of an investment partnership

except as provided by regulations adopted by the Director of the Department of Finance and Administration.

**History.** Acts 1929, No. 118, Art. 2, § 3; § 1; 1967, No. 46, § 2; A.S.A. 1947, § 84-Pope's Dig., § 14026; Acts 1947, No. 135, 2003; Acts 1999, No. 1283, § 1.

## CASE NOTES

### ANALYSIS

Interstate Commerce.  
Salaries.

#### Interstate Commerce.

This section had no relation to profits gained from interstate transactions by a corporation conducting a business in another state. *Temple v. Gates*, 186 Ark. 820, 56 S.W.2d 417 (1933) (decision prior to 1947 amendment).

Income of foreign corporation derived solely from contracts made in other states for the hire or lease of refrigerated cars and used by the contractees in interstate transportation of perishable products was subject to tax under this section. *Commis-*

*sioner of Revenues v. Pacific Fruit Express Co.*, 227 Ark. 8, 296 S.W.2d 676 (1956).

#### Salaries.

Salaries of nonresident secretary-treasurer and president of domestic corporation were not subject to income tax of Arkansas where secretary-treasurer spent all of her time for the company in Tennessee, and president spent only six days a month in Arkansas on business for the company, as the statute makes no provision or method for allocating that portion of the income earned by nonresidents in Arkansas. *Cook v. Ayres*, 214 Ark. 308, 215 S.W.2d 705 (1948).

**Cited:** *Shinn v. Heath*, 259 Ark. 577, 535 S.W.2d 57 (1976).

## 26-51-203. Fiduciaries.

(a) The tax imposed by the Income Tax Act of 1929 shall be imposed upon resident fiduciaries, which tax shall be levied, collected, and paid annually with respect to:

(1) That part of the net income of estates or trusts which has not been distributed or become distributable to beneficiaries during the income year. In the case of two (2) or more joint fiduciaries, part of whom are nonresidents of this state, such part of the net income shall be treated as if each fiduciary had received an equal share;

(2) The net income received during the income year by deceased individuals who at the time of death were residents and who have died during the tax year without having made a return; and

(3) The entire net income of resident insolvent or incompetent individuals, whether or not any portion thereof is held for the future use of the beneficiaries, where the fiduciary has complete charge of the net income.

(b) The tax imposed upon a fiduciary by the Income Tax Act of 1929 shall be a charge against the estate or trust.

**History.** Acts 1929, No. 118, Art. 2, § 5; Pope's Dig., § 14028; A.S.A. 1947, § 84-2005.

**Meaning of "Income Tax Act of 1929".** See note to § 26-51-101.

## RESEARCH REFERENCES

**Ark. L. Rev.** Tax Problems of the Personal Representative, 16 Ark. L. Rev. 364.

**26-51-204. Railroads and public utilities.**

Every railroad or other public utility, whether organized under the laws of this state or any other state or the federal government, shall be subject to the provisions of the Income Tax Act of 1929 and shall pay the state income tax levied by this subchapter upon that proportion of its entire net income applicable to the State of Arkansas.

**History.** Acts 1929, No. 118, Art. 2, § 3; Pope's Dig., § 14026; A.S.A. 1947, § 84-2003; Acts 2007, No. 218, § 10.

**Meaning of "Income Tax Act of 1929".** See note to § 26-51-101.

## CASE NOTES

## ANALYSIS

Constitutionality.

Carriers.

Effect of Subsequent Legislation.

Railroads.

**Constitutionality.**

This section, fixing the method of determining taxable income of interstate utilities, was not shown to be discriminatory against railroads or the taking of its property without due process. *Cook v. Kansas City S. Ry.*, 212 Ark. 253, 205 S.W.2d 441 (1947), cert. denied, *Kansas City Southern R. Co. v. Cook*, 333 U.S. 873, 68 S. Ct. 902 (1948).

As to unconstitutional delegation of power to federal agency expressly reserved to state legislature by Arkansas Constitution, see *Cheney v. St. Louis S. R. Co.*, 239 Ark. 870, 394 S.W.2d 731 (1965).

**Carriers.**

Income assessments made against interstate passenger bus companies based on the statutory formula prescribed by this section were neither oppressive nor discriminatory and did not deprive them of any constitutional right. *Commissioner of Revenues v. Transcontinental Bus Sys.*, 227 Ark. 811, 301 S.W.2d 569 (1957).

A Texas corporation engaged in interstate and intrastate transportation of property as a common carrier, in figuring

its net income for a year, could not claim as a deduction the amount of retail sales taxes it had paid in the taxable year to the state of Texas on motor vehicle purchases. *Cheney v. East Tex. Motor Freight, Inc.*, 233 Ark. 675, 346 S.W.2d 513 (1961).

Corporation engaged in interstate and intrastate transportation of property as a common carrier held not free to calculate and claim depreciation as it desired under § 26-51-428. *Cheney v. East Tex. Motor Freight, Inc.*, 233 Ark. 675, 346 S.W.2d 513 (1961).

**Effect of Subsequent Legislation.**

Section 84-2003(e) [unconstitutional] has not been superseded by or amended by § 26-51-428, which was added to the Income Tax Law by Acts 1957, No. 156, § 1. *Cheney v. East Tex. Motor Freight, Inc.*, 233 Ark. 675, 346 S.W.2d 513 (1961).

**Railroads.**

Right of state to value property of a unitary enterprise, including railroads, as a unit, has been recognized, and the apportionment to state of its fair ratable portion of such value by using revenue ratio in apportioning income and operating expenses has been held not improper. *Cook v. Kansas City S. Ry.*, 212 Ark. 253, 205 S.W.2d 441 (1947), cert. denied, *Kansas City Southern R. Co. v. Cook*, 333 U.S. 873, 68 S. Ct. 902 (1948).

**Cited:** *Shinn v. Heath*, 259 Ark. 577, 535 S.W.2d 57 (1976).



**26-51-205. Corporations — Work Force 2000 Development Fund.**

(a) Every corporation organized under the laws of this state shall pay annually an income tax with respect to carrying on or doing business on the entire net income of the corporation, as now defined by the laws of the State of Arkansas, received by such corporation during the income year, on the following basis:

- (1) On the first \$3,000 of net income or any part thereof ..... 1 %
- On the second \$3,000 of net income or any part thereof ..... 2 %
- On the next \$5,000 of net income or any part thereof ..... 3 %
- On the next \$14,000 of net income or any part thereof ..... 5 %
- On the next \$75,000 of net income or any part thereof, but not exceeding \$100,000 ..... 6 %
- (2) On net income exceeding one hundred thousand dollars (\$100,000), a flat rate of six and one-half percent (6 ½ %) shall be applied to the entire net income.

(b) Every foreign corporation doing business within the jurisdiction of this state shall pay annually an income tax on the proportion of its entire net income as now determined by the income tax laws of Arkansas, on the following basis:

- (1) On the first \$3,000 of net income or any part thereof ..... 1 %
- On the second \$3,000 of net income or any part thereof ..... 2 %
- On the next \$5,000 of net income or any part thereof ..... 3 %
- On the next \$14,000 of net income or any part thereof ..... 5 %
- On the next \$75,000 of net income or any part thereof, but not exceeding \$100,000 ..... 6 %
- (2) On net income exceeding one hundred thousand dollars (\$100,000), a flat rate of six and one-half percent (6 ½ %) shall be applied to the entire net income.

(c)(1)(A) There is created on the books of the Treasurer of State, the Auditor of State, and the Chief Fiscal Officer of the State a fund to be known as the "Work Force 2000 Development Fund".

(B) The Work Force 2000 Development Fund shall consist of those special revenues as specified in subdivision (c)(2) of this section and all other revenues as may be authorized by law.

(2)(A) The Revenue Division of the Department of Finance and Administration shall deposit the funds collected under the provisions of this section for corporate income tax into the State Treasury, there to be credited to the Revenue Holding Fund Account of the State Apportionment Fund.

(B)(i)(a) For each of the state's fiscal years, the Chief Fiscal Officer of the State shall determine as an annual allocation available under the provisions of this section an amount based on the total net revenues, as enumerated in subsections (a) and (b) of this section, which were collected in the immediate past year, multiplied by a factor of six hundred seventy-eight ten thousandths (.0678).

(b) On the last day of each month of the respective fiscal year, the Chief Fiscal Officer of the State shall certify to the Treasurer of State

an amount based on one-twelfth (1/12) of the annual allocation provided in this section for transfer as specified in subdivision (c)(2)(B)(ii) of this section.

(ii) The Treasurer of State shall then transfer the amount so certified to the Special Revenue Fund Account as part of the gross special revenues.

(iii) After the deductions as set out in § 19-5-203 have been made, the remaining amount shall be credited to the Work Force 2000 Development Fund.

(iv) The remaining corporate income tax collections remaining in the Revenue Holding Fund Account shall be credited to the General Revenue Fund Account of the State Apportionment Fund, there to be distributed with the other gross general revenue collections for that month in accordance with the provisions of § 19-5-201 et seq.

(d)(1) All proceeds derived from the additional tax levied by this section shall be used exclusively for the authorized educational activities of:

(A) Any postsecondary vocational-technical school, technical institute, comprehensive lifelong learning center, technical college, community college; or

(B) Any postsecondary vocational-technical school, technical institute, comprehensive lifelong learning center, or technical college that merges with a two-year branch of a four-year institution, a four-year institution, a technical college, or a community college.

(2)(A) The distribution of the proceeds shall be supervised by the State Board of Career Education for the postsecondary vocational-technical schools, technical institutes, and comprehensive lifelong learning centers.

(B) The distribution of the proceeds for technical colleges, community colleges, or any postsecondary vocational-technical school, technical institute, comprehensive lifelong learning center, or technical college that merges with a two-year branch of a four-year institution, a four-year institution, a technical college, or a community college shall continue at the same proportion as those distributions made in fiscal year 1996-1997, excluding one-time capital disbursements and professional development disbursements made in fiscal year 1996-1997 equal to the amount of funds distributed in fiscal year 1998-1999.

(C) Any increase in the amount of funds in the Work Force 2000 Development Fund above the amount distributed in fiscal year 1998-1999 shall be supervised by the Arkansas Higher Education Coordinating Board and shall be distributed after a review of needs including, but not limited to, equity considerations and workforce development and after consultation with the presidents and chancellors of the technical and former technical colleges.

**History.** Acts 1941, No. 129, § 2; 1969, Acts 1991, No. 1052, §§ 1-4; 1997, No. 392, §§ 1, 2; A.S.A. 1947, § 84-2004; 171, § 2; 1999, No. 1315, §§ 2, 3.

**A.C.R.C. Notes.** Acts 2012, No. 247, § 19, provided: "WORK FORCE 2000 DEVELOPMENT FUND PROCEDURES. After the amounts to be made available to the various technical colleges have been determined as set out in Arkansas Code 26-51-205(d)(2), such documents as may be necessary shall be processed so that funds may be transferred from the Work Force 2000 Development Fund to the State Treasury fund or fund account from which the technical college draws its general revenue support. Such funds as may be transferred shall not exceed 93.691% of the total funds available from the Work Force 2000 Development Fund during the fiscal year.

"In the event that a technical institute or comprehensive lifelong learning center which receives support from the Work Force 2000 Development Fund as determined by law transfers or merges into the Arkansas Technical College and Community College System for which Work Force 2000 Development Fund monies are determined by law, then the actual amount of support from the Work Force 2000 Development Fund in the preceding fiscal year for such educational institution shall be made available irrespective of any other provision of law which sets out maximum levels of support from such fund.

"The provisions of this section shall be in effect only from July 1, 2012 through June 30, 2013."

Acts 2012, No. 281, § 77, provided:

"WORK FORCE 2000 DISTRIBUTION." After the amounts to be made available to the various technical institutes or comprehensive lifelong learning centers have been determined as set out in Arkansas Code 26-51-205(d)(2), such documents as may be necessary shall be processed so that funds may be transferred from the Work Force 2000 Development Fund to the State Treasury fund or fund account from which the technical institute or comprehensive lifelong learning center draws its general revenue support. Such funds as may be transferred shall not exceed 6.309% of the total funds available from the Work Force 2000 Development Fund during each fiscal year.

"In the event that a technical college, community college or educational institution which receives support from the Work Force 2000 Development Fund as determined by law transfers from the Arkansas Technical College and Community College System for which Work Force 2000 Development Fund monies are determined by law, then the actual amount of support from the Work Force 2000 Development Fund in the preceding fiscal year for such educational institution shall be made available irrespective of any other provision of law which sets out maximum levels of support from such fund.

"The provisions of this section shall be in effect only from July 1, 2012 through June 30, 2013."

**Publisher's Notes.** Acts 1991, No. 1052, § 2, is also codified as § 19-6-467.

## RESEARCH REFERENCES

**Ark. L. Rev.** Constitutional Law — Corporate Income Taxation Classification for Income Tax Purposes, 14 Ark. L. Rev. 168.

Note, Is the Professional Association Dead after TEFRA? — The Continuing

Saga of Hunter and Hunted, 36 Ark. L. Rev. 508.

**U. Ark. Little Rock L.J.** Survey, Taxation, 14 U. Ark. Little Rock L.J. 401.

## CASE NOTES

### ANALYSIS

Constitutionality.  
Construction.  
Doing Business.  
Outside Income.

### Constitutionality.

Former statutory provisions held unconstitutional and void insofar as they attempted to tax domestic corporation's income from its plants located outside state. *Wiseman v. Interstate Pub. Serv.*



Co., 191 Ark. 255, 85 S.W.2d 700 (1935); *McCarroll v. Gregory-Robinson-Speas, Inc.*, 198 Ark. 235, 129 S.W.2d 254, 122 A.L.R. 977 (1939) (decision under prior law).

The emergency clause in Acts 1991, No. 1052, § 9, stated an emergency, inadequate support of education, sufficient to meet the requirements of Ark. Const., Art. 5, § 38, to impose the tax provided in this section. *ACW, Inc. v. Weiss*, 329 Ark. 302, 947 S.W.2d 770 (1997).

#### **Construction.**

The phrase "to the entire net income" in subdivision (a)(2), as amended in 1991, rendered this section internally inconsistent and ambiguous; to give effect to the legislative intent and to be consistent with judicial decisions relating to the interpretation of tax measures, this section was held to impose a graduated tax applying to all corporations for the first \$100,000 of net income, and a flat tax of 6½% on the entire net income above \$100,000. *ACW,*

*Inc. v. Weiss*, 329 Ark. 302, 947 S.W.2d 770 (1997).

#### **Doing Business.**

Corporation's sale of its assets for purpose of distributing proceeds of sale to shareholders pursuant to a program of liquidation is not "doing business" within the meaning of this section, and any profit realized from such sale is taxable to the shareholders, and not to the corporation. *Larey v. Mountain Valley Spring Co.*, 245 Ark. 689, 434 S.W.2d 820 (1968).

#### **Outside Income.**

Income of a corporation derived entirely from sources outside the state is not subject to the state income tax. *Cheney v. Stephens, Inc.*, 231 Ark. 541, 330 S.W.2d 949 (1960).

**Cited:** *Hardin v. Ft. Smith Couch & Bedding Co.*, 202 Ark. 814, 152 S.W.2d 1015 (1941); *United States Tobacco Co. v. Martin*, 304 Ark. 119, 801 S.W.2d 256 (1990).

### **26-51-206. Commercial ventures by churches — Exceptions.**

(a) All income derived from the operation of any business or commercial enterprise or the sale, rental, or other disposition of any property used by a church in its operation of a business or commercial enterprise in this state shall be subject to the Arkansas income tax, except where the income is reinvested in similar property, and shall be reported and the Arkansas income tax paid thereon.

(b)(1) Income from the interest on the savings and investments from dedicated funds, from the sale of dedicated church property, and from the rental of dedicated church property shall be excluded from the provisions of this section.

(2) It is not the intent of this section to impose the Arkansas income tax on rentals or gains on sales of dedicated property held only as a passive investment by a church.

(c) The Director of the Department of Finance and Administration is authorized to promulgate reasonable rules and regulations to carry out the provisions of this section.

**History.** Acts 1987, No. 1040, §§ 3, 4.

**Cross References.** Exempt organizations, § 26-51-303.

### **26-51-207. Income tax surcharge.**

(a) In addition to the taxes levied by §§ 26-51-201 et seq., 26-51-301, and 26-51-302 [repealed], there is levied an income tax surcharge of

three percent (3%) of the tax liability of every person required to file an Arkansas income tax return.

(b)(1) If an individual is a resident of an Arkansas border city described in § 26-52-601 et seq., the individual shall be liable for the income tax surcharge levied in subsection (a) of this section.

(2) The surcharge shall be computed on the tax liability that would have been due had the income tax exemption of § 26-52-601 et seq. not been available.

(3) The income tax exemption of § 26-52-601 et seq. shall not apply to the income tax surcharge levied in subsection (a) of this section.

(c) The revenues derived from the additional tax imposed by this section shall be credited to the General Revenue Fund Account of the State Apportionment Fund, there to be distributed with the other gross general revenue collections.

(d) As used in this section, "tax liability" means the taxes imposed pursuant to §§ 26-51-201 et seq., 26-51-301, and 26-51-302 [repealed] before the application of any tax credits.

(e) This section shall apply only to tax years beginning in calendar years 2003 and 2004.

**History.** Acts 2003 (1st Ex. Sess.), No. 38, § 3; 2005, No. 63, § 1.

### SUBCHAPTER 3 — EXEMPTIONS AND REDUCED TAX RATES

#### SECTION.

- 26-51-301. Individuals exempt from taxation or qualifying for the low income tax credit.
- 26-51-302. [Repealed.]
- 26-51-303. Exempt organizations.
- 26-51-304. Income from investments made by nonprofit organizations.
- 26-51-305. [Repealed.]
- 26-51-306. Compensation and benefits from military service.
- 26-51-307. Retirement or disability benefits.

#### SECTION.

- 26-51-308. Trusts for qualified deferred compensation plans exempt.
- 26-51-309. Charitable remainder trusts.
- 26-51-310. Foreign income exclusion.
- 26-51-311. Qualified windmill blade manufacturing exemption.
- 26-51-312. Qualified windmill blade and windmill component manufacturing exemption.

**Preambles.** Acts 1929, No. 118, contained a preamble which read: "Whereas, this State has been neglectful of its Wards in the Charitable Institutions, which is a disgrace to the people of a Great Commonwealth, and it is imperative that additional Revenue should be provided to correct the fearful conditions which now exist; and

"Whereas, an equalization Fund should be provided to give equal Educational op-

portunities to the Boys and Girls of our Rural Communities; and

"Whereas, Agricultural and Industrial development is now being retarded because of a policy to secure practically all of the Revenue from an Ad Valorem Tax, thus penalizing and discouraging ownership of property, while many who enjoy the benefits of Government and have large incomes, pay almost nothing to support the Government;

"Therefore...."

**Effective Dates.** Acts 1929, No. 118, § 44: approved Mar. 9, 1929. Emergency clause provided: "It is hereby ascertained and declared that the Hospital for Nervous Diseases is inadequate to properly care for all who should be confined therein, to the end there are many persons of unsound mind at large, who are a menace to the public safety, and that said Hospital as now equipped is inadequate to restrain those insane persons who are confined therein, so that there is danger of their escaping at any time and imperil the safety of the public; that there are hundreds and hundreds of persons desiring to enter the Tuberculosis Sanitarium who cannot now be accommodated there, because that institution has neither room, beds nor facilities for additional people, as a result said consumptives at large are spreading the disease amongst their families and friends; that the funds to be raised by this Act will be used for the better care of the charitable wards of this State and to provide better for the rural schools of this State; and it is therefore ascertained and declared that it is necessary for the public peace, health and safety that this Act go into immediate operation, and accordingly it is provided that this act shall take effect and be in force from and after its passage."

Acts 1941, No. 129, § 8: approved Mar. 11, 1941. Emergency clause provided: "Because of the various social problems caused by the failure of the State to provide adequate relief for its aged citizens, and it appearing that there is a dire need for additional funds to meet the requirements of the Social Security Act and give additional revenue to this State and because the old folks in this State are suffering by reason of the failure of the State to secure funds with which to pay Old Age Pensions, and [an] emergency is hereby found to exist and is so declared by the Legislature of Arkansas; that this Act being necessary for the immediate preservation of the public peace, health and safety, shall be in full force and effect from and after its passage."

Acts 1943, No. 61, § 5: approved Feb. 17, 1943. Emergency clause provided: "The object of this bill being to relieve members of the armed services of the United States of the payment of State income taxes on compensation or allow-

ances received for services rendered in the armed forces, in order to preserve the public peace, health and safety of the State of Arkansas, an emergency is declared to exist and this bill shall be in full force and effect from and after its passage."

Acts 1959, No. 202, § 7: Jan. 1, 1959.

Acts 1965, No. 149, §§ 2, 3: Jan. 1, 1965. Emergency clause provided: "It is hereby found and determined by the General Assembly that the current status of the Income Tax Law relating to non-profit organizations is such as to raise a technical question as to the exemption of investment income of foreign and domestic non-profit organizations where such income is for the purpose of pension and annuity benefits for their members; and in order to attract foreign investment capital and to encourage pension and annuity plans for the benefit of residents of this State, and these things being found necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, and this Act shall be in full force and effect from and after its passage and approval." Approved March 9, 1965.

Acts 1973, No. 4, § 4: effective for all tax years beginning on or after Jan. 1, 1973.

Acts 1973, No. 182, §§ 9, 10: Jan. 1, 1973. Emergency clause provided: "It is hereby found and determined by the General Assembly that the present law relative to the taxation of banks and savings and loan associations is somewhat vague and indefinite, that such institutions should pay the same taxes as other business corporations in the State, and this Act is immediately necessary to clarify the laws with respect to the taxation of financial institutions and to assure that such institutions pay the same taxes as other business corporations. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval." Approved February 22, 1973.

Acts 1983, No. 379, § 27: Dec. 31, 1982. Emergency clause provided: "It is hereby found and determined by the General Assembly that certain provisions of the State's income and estate tax laws that have counterparts in the Federal tax laws do not coincide with recent amendments



and changes to the Federal tax laws; and that this Act is immediately necessary to make the Arkansas tax laws conform with the Federal tax laws to clarify any possible question of confusion caused by such differences. Therefore, an emergency is hereby declared to exist and this Act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect for all income years after, or estate tax return filing dates coming after, December 31, 1982."

Acts 1987, No. 1033, § 10, provided that the provisions of this act as to premium taxes shall apply to all premiums which are collected in calendar year 1987 upon which the premium tax is reported and paid in 1988, and the provisions of this act as to income taxes shall apply to all income years beginning on or after January 1, 1987.

Acts 1989 (3rd Ex. Sess.), No. 27, § 6, provided that the act shall be applicable to income years beginning on or after January 1, 1989.

Acts 1989 (3rd Ex. Sess.), No. 27, § 7: Nov. 6, 1989. Emergency clause provided: "It is hereby found and determined by the General Assembly that certain inequities have evolved through the years concerning the taxation of retirement and disability income in this state; that such inequities have no just or sound basis and are creating an undue burden on some taxpayers within this state; that this act should be given effect immediately to stop these inequities and to limit continued potential legal costs to taxpayers under the current tax structure. Therefore, an emergency is hereby declared to exist and this Act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1991, No. 95, § 5, provided that "the provisions contained in this act shall be effective for tax years beginning on and after January 1, 1991."

Acts 1991, No. 95, § 9: Feb. 11, 1991. Emergency clause provided: "It is hereby found and determined by the General Assembly that certain low income working taxpayers and senior citizens bear a disproportionate share of the state tax burden; that unless this act becomes effective immediately upon passage irreparable harm will occur to low income taxpayers of

this state; and that this act should become effective immediately upon passage. Therefore, an emergency is hereby declared to exist and this Act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1991, No. 1123, § 25: Apr. 9, 1991. Emergency clause provided: "It is hereby found and determined by the General Assembly that the laws of this State concerning the insurance matters covered in the subject of this Act are inadequate for the protection of the public. Therefore, an emergency is hereby declared to exist and this Act being necessary for the preservation of the public peace, health and safety all provisions of this Act other than Section 22 shall be in full force and effect from and after July 1, 1991 and Section 22 shall be in full force and effect from and after the passage and approval of this Act."

Acts 1993, No. 785, § 24: Mar. 30, 1993. Emergency clause provided: "It is hereby found and determined that certain changes are necessary to the Arkansas income tax laws; that these changes are necessary immediately in order to maintain the efficient administration of the Arkansas income tax laws; and that this act is necessary to effectuate that purpose. Therefore, an emergency is hereby declared to exist and this act being necessary for the preservation of public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1993, No. 1147, § 1705: January 1, 1994.

Acts 1995, No. 1160, § 46: Apr. 11, 1995. Emergency clause provided: "It is hereby found and determined by the General Assembly that certain changes are necessary to the Arkansas tax laws; that these changes are necessary immediately in order to maintain the efficient administration of the Arkansas income tax laws; and that this act is necessary to effectuate that purpose. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1997, No. 328, § 11: effective on and after November 15, 1998 unless a constitutional amendment or initiated act

shall be approved or an act of the General Assembly shall become law before that date which exempts food, either wholly or partially, from the Arkansas gross receipts tax. If a constitutional amendment, initiated act, or act of the General Assembly exempting food is not approved, then the provisions of Section 1, 2, 3, 4, 6, 7, and 8 of this Act shall be effective for tax years beginning on and after January 1, 1998; the provisions of Section 5 of this Act shall be effective as provided in that section; and the provisions of Section 9 of this Act shall be effective as provided in Section 10."

Acts 1997, No. 951, § 34, provided: "Sections 1 through 24, 32 and 33 shall be effective for tax years beginning on and after January 1, 1997. However, it is the intent of this Act that those portions of the Internal Revenue Code adopted by this Act which for federal tax purposes do not become effective until some time after January 1, 1997, shall also not become effective for state tax purposes until the same time."

Acts 1997, No. 951, § 38: March 31, 1997. Emergency clause provided: "It is hereby found and determined by the General Assembly that current state tax laws are unclear or confusing, creating difficulty for taxpayers seeking to comply with these tax laws; that the changes made by Sections 25 through 31 of this bill are necessary to provide adequate direction to those taxpayers and to maintain the efficient administration of the Arkansas tax laws; and that the provisions of Sections 25 through 31 of this Act are necessary to effectuate that purpose. Therefore, an emergency is hereby declared to exist and the provisions of Sections 25 through 31 of this Act being necessary for the preserva-

tion of the public peace, health, and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, Sections 25 through 31 shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, Sections 25 through 31 shall become effective on the date the last house overrides the veto."

Acts 1999, No. 817, § 2 provided: "The provisions of this act shall be effective for tax years beginning on or after January 1, 2000."

Acts 1999, No. 1126, § 43: effective for tax years beginning on or after January 1, 1999.

Acts 2001, No. 773, § 12: effective for tax years beginning on and after January 1, 2001.

Acts 2005, No. 29, § 2: effective for tax years beginning on and after January 1, 2005.

Acts 2005, No. 675, § 17: effective for tax years beginning on and after January 1, 2005.

Acts 2005, No. 2187, § 3: effective for tax years beginning on and after January 1, 2005.

Acts 2007, No. 195, § 3: effective for tax years beginning on and after January 1, 2007.

Acts 2007, No. 990, § 2: effective for tax years beginning on or after 2007.

Acts 2009, No. 372, § 25, provided: "This act is effective for tax years beginning on and after January 1, 2009."

Acts 2009, No. 736, § 3 provided: "This act is effective for tax years beginning on or after 2008."

Acts 2011, No. 736 § 2: effective for tax years beginning on or after Jan. 1, 2011.

## RESEARCH REFERENCES

**Am. Jur.** 71 Am. Jur. 2d, State Tax., § 475 et seq.

**C.J.S.** 85 C.J.S., Tax., § 1098.

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## 26-51-301. Individuals exempt from taxation or qualifying for the low income tax credit.

(a) As used in this section:

(1) "Head of household" means the same as defined in 26 U.S.C. § 2(b), as in effect on January 1, 2011; and

(2) "Qualifying widow or widower" means the "surviving spouse" as defined in 26 U.S.C. § 2(a), as in effect on January 1, 2011.

(b)(1) Beginning with tax year 2010, the following taxpayers are exempt from state individual income tax:

(A) A single individual whose gross income is less than ten thousand six hundred eighty-two dollars (\$10,682) for any income year;

(B) A married couple filing jointly with one (1) or fewer dependents whose gross income is less than eighteen thousand twelve dollars (\$18,012) for any income year;

(C) A married couple filing jointly with two (2) or more dependents whose gross income is less than twenty-one thousand six hundred seventy-seven dollars (\$21,677) for any income year; and

(D) A head of household or qualifying widow or widower with one (1) or more dependents whose gross income is less than fifteen thousand one hundred eighty-five dollars (\$15,185) for any income year.

(2) Beginning with tax year 2011:

(A) A head of household or qualifying widow or widower with one (1) or fewer dependents whose gross income is less than the 2010 base rate of fifteen thousand one hundred eighty-five dollars (\$15,185) plus the yearly cost-of-living adjustment provided by subsection (e) of this section for any income year is exempt from state individual income tax; and

(B) A head of household or qualifying widow or widower with two (2) or more dependents whose gross income is less than the 2010 base rate of eighteen thousand one hundred one dollars (\$18,101) plus the yearly cost-of-living adjustment provided by subsection (e) of this section for any income year is exempt from state individual income tax.

(c)(1) Beginning with tax year 2010, the following taxpayers are eligible for a low income tax credit:

(A) A single individual whose gross income for the taxable year is ten thousand six hundred eighty-two dollars (\$10,682) or more but less than fourteen thousand dollars (\$14,000);

(B) A married couple filing jointly with one (1) or fewer dependents whose gross income for the taxable year is eighteen thousand twelve dollars (\$18,012) or more but less than twenty-two thousand four hundred dollars (\$22,400);

(C) A married couple filing jointly with two (2) or more dependents whose gross income for the taxable year is twenty-one thousand six hundred seventy-seven dollars (\$21,677) or more but less than twenty-seven thousand eight hundred dollars (\$27,800); and

(D) A head of household or a qualifying widow or widower with one (1) or more dependents whose gross income for the taxable year is fifteen thousand one hundred eighty-five dollars (\$15,185) or more but less than nineteen thousand six hundred dollars (\$19,600).



(2) Beginning with tax year 2011:

(A) A head of household or a qualifying widow or widower with one (1) or fewer dependents whose gross income for the taxable year is more than the 2010 base rate of fifteen thousand one hundred eighty-five dollars (\$15,185) plus the cost-of-living adjustment provided by subsection (e) of this section but less than the 2010 base rate of nineteen thousand six hundred dollars (\$19,600) plus the cost-of-living adjustment provided by subsection (e) of this section is eligible for a low income tax credit; and

(B) A head of household or a qualifying widow or widower with two (2) or more dependents whose gross income for the taxable year is more than the 2010 base rate of eighteen thousand one hundred one dollars (\$18,101) plus the cost-of-living adjustment provided by subsection (e) of this section but less than the 2010 base rate of twenty-two thousand two hundred dollars (\$22,200) plus the cost-of-living adjustment provided by subsection (e) of this section is eligible for a low income tax credit.

(d)(1) For income tax year 2010, the low income tax credit in subdivision (c)(1) of this section shall be determined in accordance with the tables below, based upon the taxpayer's filing status:

Single Taxpayer

From	Less Than	Credit
\$10,682	\$10,700	\$133
\$10,701	\$10,800	\$129
\$10,801	\$10,900	\$125
\$10,901	\$11,000	\$121
\$11,001	\$11,100	\$117
\$11,101	\$11,200	\$113
\$11,201	\$11,300	\$109
\$11,301	\$11,400	\$105
\$11,401	\$11,500	\$101
\$11,501	\$11,600	\$97
\$11,601	\$11,700	\$93
\$11,701	\$11,800	\$89
\$11,801	\$11,900	\$85
\$11,901	\$12,000	\$81
\$12,001	\$12,100	\$77
\$12,101	\$12,200	\$73
\$12,201	\$12,300	\$69
\$12,301	\$12,400	\$65
\$12,401	\$12,500	\$61
\$12,501	\$12,600	\$57
\$12,601	\$12,700	\$53
\$12,701	\$12,800	\$49
\$12,801	\$12,900	\$45

\$12,901	\$13,000	\$41
\$13,001	\$13,100	\$37
\$13,101	\$13,200	\$33
\$13,201	\$13,300	\$29
\$13,301	\$13,400	\$25
\$13,401	\$13,500	\$21
\$13,501	\$13,600	\$17
\$13,601	\$13,700	\$13
\$13,701	\$13,800	\$9
\$13,801	\$13,900	\$5
\$13,901	\$14,000	\$1

### Married Filing Jointly With One (1) or Fewer Dependents

From	Less Than	Credit
\$18,012	\$18,100	\$302
\$18,101	\$18,200	\$295
\$18,201	\$18,300	\$288
\$18,301	\$18,400	\$281
\$18,401	\$18,500	\$274
\$18,501	\$18,600	\$267
\$18,601	\$18,700	\$260
\$18,701	\$18,800	\$253
\$18,801	\$18,900	\$246
\$18,901	\$19,000	\$239
\$19,001	\$19,100	\$232
\$19,101	\$19,200	\$225
\$19,201	\$19,300	\$218
\$19,301	\$19,400	\$211
\$19,401	\$19,500	\$204
\$19,501	\$19,600	\$197
\$19,601	\$19,700	\$190
\$19,701	\$19,800	\$183
\$19,801	\$19,900	\$176
\$19,901	\$20,000	\$169
\$20,001	\$20,100	\$162
\$20,101	\$20,200	\$155
\$20,201	\$20,300	\$148
\$20,301	\$20,400	\$141
\$20,401	\$20,500	\$134
\$20,501	\$20,600	\$127
\$20,601	\$20,700	\$120
\$20,701	\$20,800	\$113
\$20,801	\$20,900	\$106

\$20,901	\$21,000	\$99
\$21,001	\$21,100	\$92
\$21,101	\$21,200	\$85
\$21,201	\$21,300	\$78
\$21,301	\$21,400	\$71
\$21,401	\$21,500	\$64
\$21,501	\$21,600	\$57
\$21,601	\$21,700	\$50
\$21,701	\$21,800	\$43
\$21,801	\$21,900	\$36
\$21,901	\$22,000	\$29
\$22,001	\$22,100	\$22
\$22,101	\$22,200	\$15
\$22,201	\$22,300	\$8
\$22,301	\$22,400	\$1

## Married Filing Jointly With Two (2) or More Dependents

From	Less Than	Credit
\$21,677	\$21,700	\$432
\$21,701	\$21,800	\$425
\$21,801	\$21,900	\$418
\$21,901	\$22,000	\$411
\$22,001	\$22,100	\$404
\$22,101	\$22,200	\$397
\$22,201	\$22,300	\$390
\$22,301	\$22,400	\$383
\$22,401	\$22,500	\$376
\$22,501	\$22,600	\$369
\$22,601	\$22,700	\$362
\$22,701	\$22,800	\$355
\$22,801	\$22,900	\$348
\$22,901	\$23,000	\$341
\$23,001	\$23,100	\$334
\$23,101	\$23,200	\$327
\$23,201	\$23,300	\$320
\$23,301	\$23,400	\$313
\$23,401	\$23,500	\$306
\$23,501	\$23,600	\$299
\$23,601	\$23,700	\$292
\$23,701	\$23,800	\$285
\$23,801	\$23,900	\$278
\$23,901	\$24,000	\$271
\$24,001	\$24,100	\$264



\$24,101	\$24,200	\$257
\$24,201	\$24,300	\$250
\$24,301	\$24,400	\$243
\$24,401	\$24,500	\$236
\$24,501	\$24,600	\$229
\$24,601	\$24,700	\$222
\$24,701	\$24,800	\$215
\$24,801	\$24,900	\$208
\$24,901	\$25,000	\$201
\$25,001	\$25,100	\$194
\$25,101	\$25,200	\$187
\$25,201	\$25,300	\$180
\$25,301	\$25,400	\$173
\$25,401	\$25,500	\$166
\$25,501	\$25,600	\$159
\$25,601	\$25,700	\$152
\$25,701	\$25,800	\$145
\$25,801	\$25,900	\$138
\$25,901	\$26,000	\$131
\$26,001	\$26,100	\$124
\$26,101	\$26,200	\$117
\$26,201	\$26,300	\$110
\$26,301	\$26,400	\$103
\$26,401	\$26,500	\$96
\$26,501	\$26,600	\$89
\$26,601	\$26,700	\$82
\$26,701	\$26,800	\$75
\$26,801	\$26,900	\$68
\$26,901	\$27,000	\$61
\$27,001	\$27,100	\$54
\$27,101	\$27,200	\$47
\$27,201	\$27,300	\$40
\$27,301	\$27,400	\$33
\$27,401	\$27,500	\$26
\$27,501	\$27,600	\$19
\$27,601	\$27,700	\$12
\$27,701	\$27,800	\$5

Head of Household/Qualifying Widow or Widower With One (1) or More Dependents for Tax Year 2010 and with One (1) or Fewer Dependents Beginning with Tax Year 2011

From	Less Than	Credit
\$15,185	\$15,200	\$270
\$15,201	\$15,300	\$264

\$15,301	\$15,400	\$258
\$15,401	\$15,500	\$252
\$15,501	\$15,600	\$246
\$15,601	\$15,700	\$240
\$15,701	\$15,800	\$234
\$15,801	\$15,900	\$228
\$15,901	\$16,000	\$222
\$16,001	\$16,100	\$216
\$16,101	\$16,200	\$210
\$16,201	\$16,300	\$204
\$16,301	\$16,400	\$198
\$16,401	\$16,500	\$192
\$16,501	\$16,600	\$186
\$16,601	\$16,700	\$180
\$16,701	\$16,800	\$174
\$16,801	\$16,900	\$168
\$16,901	\$17,000	\$162
\$17,001	\$17,100	\$156
\$17,101	\$17,200	\$150
\$17,201	\$17,300	\$144
\$17,301	\$17,400	\$138
\$17,401	\$17,500	\$132
\$17,501	\$17,600	\$126
\$17,601	\$17,700	\$120
\$17,701	\$17,800	\$114
\$17,801	\$17,900	\$108
\$17,901	\$18,000	\$102
\$18,001	\$18,100	\$96
\$18,101	\$18,200	\$90
\$18,201	\$18,300	\$84
\$18,301	\$18,400	\$78
\$18,401	\$18,500	\$72
\$18,501	\$18,600	\$66
\$18,601	\$18,700	\$60
\$18,701	\$18,800	\$54
\$18,801	\$18,900	\$48
\$18,901	\$19,000	\$42
\$19,001	\$19,100	\$36
\$19,101	\$19,200	\$30
\$19,201	\$19,300	\$24
\$19,301	\$19,400	\$18
\$19,401	\$19,500	\$12
\$19,501	\$19,600	\$6

(2) For income tax year 2011, the low income tax credit in subdivision (c)(2)(B) of this section shall be determined using the 2010 base-year table below and adding the yearly cost-of-living adjustment provided in subsection (e) of this section:

Head of Household/Qualifying Widow or Widower With Two (2) or More Dependents

From	Less Than	Credit
\$18,101	\$18,200	\$365
\$18,201	\$18,300	\$356
\$18,301	\$18,400	\$347
\$18,401	\$18,500	\$338
\$18,501	\$18,600	\$329
\$18,601	\$18,700	\$320
\$18,701	\$18,800	\$311
\$18,801	\$18,900	\$302
\$18,901	\$19,000	\$293
\$19,001	\$19,100	\$284
\$19,101	\$19,200	\$275
\$19,201	\$19,300	\$266
\$19,301	\$19,400	\$257
\$19,401	\$19,500	\$248
\$19,501	\$19,600	\$239
\$19,601	\$19,700	\$230
\$19,701	\$19,800	\$221
\$19,801	\$19,900	\$212
\$19,901	\$20,000	\$203
\$20,001	\$20,100	\$194
\$20,101	\$20,200	\$185
\$20,201	\$20,300	\$176
\$20,301	\$20,400	\$167
\$20,401	\$20,500	\$158
\$20,501	\$20,600	\$149
\$20,601	\$20,700	\$140
\$20,701	\$20,800	\$131
\$20,801	\$20,900	\$122
\$20,901	\$21,000	\$113
\$21,001	\$21,100	\$104
\$21,101	\$21,200	\$95
\$21,201	\$21,300	\$86
\$21,301	\$21,400	\$77
\$21,401	\$21,500	\$68
\$21,501	\$21,600	\$59
\$21,601	\$21,700	\$50



\$21,701	\$21,800	\$41
\$21,801	\$21,900	\$32
\$21,901	\$22,000	\$23
\$22,001	\$22,100	\$14
\$22,101	\$22,200	\$5

(e)(1) For tax years beginning on or after January 1, 2010, for purposes of determining the exemptions from income tax in subsection (b) of this section and determining eligibility for the low income tax credit in this section, the gross income amounts in subsections (b) and (c) of this section shall be adjusted annually by the cost-of-living adjustment for the current calendar year, rounded to the nearest whole dollar.

(2) For purposes of this subsection, the cost-of-living adjustment for any calendar year is the percentage, if any, not to exceed three percent (3%) by which the Consumer Price Index for the current calendar year exceeds the Consumer Price Index for the preceding calendar year.

(3) The Consumer Price Index for any calendar year is the average of the Consumer Price Index as of the close of the twelve-month period ending on August 31 of that calendar year.

(4) As used in this subsection, "Consumer Price Index" means the last Consumer Price Index for All Urban Consumers published by the United States Department of Labor.

(f) For tax years beginning on or after January 1, 2010, following the cost-of-living adjustment for the Consumer Price Index as provided in subsection (e) of this section, the low income tax credit in this section and the gross income limitations outlined in the tables in subsection (d) of this section shall be adjusted annually using the following method:

(1) For a single individual, the amount of the low income tax credit allowable shall be eighty percent (80%) of the income tax due upon the amount of gross income in subdivision (c)(1)(A) of this section, indexed as provided in subsection (e) of this section, and reduced, but not below zero dollars (\$0.00), by four dollars (\$4.00) for each one hundred dollars (\$100), or fraction thereof, that the taxpayer's gross income exceeds the indexed amount;

(2) For a married couple filing jointly with one (1) or fewer dependents, the amount of the low income tax credit allowable shall be eighty percent (80%) of the income tax due upon the amount of gross income in subdivision (c)(1)(B) of this section, indexed as provided in subsection (e) of this section, and reduced, but not below zero dollars (\$0.00), by seven dollars (\$7.00) for each one hundred dollars (\$100), or fraction thereof, that the taxpayer's gross income exceeds the indexed amount;

(3) For a married couple filing jointly with two (2) or more dependents, the amount of the low income tax credit allowable shall be eighty percent (80%) of the income tax due upon the amount of gross income in subdivision (c)(1)(C) of this section, indexed as provided in subsection (e) of this section, and reduced, but not below zero dollars (\$0.00), by seven dollars (\$7.00) for each one hundred dollars (\$100), or fraction thereof, that the taxpayer's gross income exceeds the indexed amount;

(4) For a head of household or qualifying widow or widower with one (1) or more dependents, the amount of the low income tax credit allowable shall be eighty percent (80%) of the income tax due upon the amount of gross income in subdivision (c)(1)(D) of this section, indexed as provided in subsection (e) of this section, reduced, but not below zero dollars (\$0.00), by six dollars (\$6.00) for each one hundred dollars (\$100), or fraction thereof, that the taxpayer's gross income exceeds the indexed amount; or

(5) Beginning with tax year 2011:

(A) For a head of household or qualifying widow or widower with one (1) or fewer dependents, the amount of the low income tax credit allowable shall be eighty percent (80%) of the income tax due upon the amount of gross income in subdivision (c)(2)(A) of this section, indexed as provided in subsection (e) of this section, reduced, but not below zero dollars (\$0.00), by six dollars (\$6.00) for each one hundred dollars (\$100), or fraction thereof, that the taxpayer's gross income exceeds the indexed amount; or

(B) For a head of household or qualifying widow or widower with two (2) or more dependents, the amount of the low income tax credit allowable shall be eighty percent (80%) of the income tax due upon the amount of gross income in subdivision (c)(2)(B) of this section, indexed as provided in subsection (e) of this section, reduced, but not below zero dollars (\$0.00), by nine dollars (\$9.00) for each one hundred dollars (\$100), or fraction thereof, that the taxpayer's gross income exceeds the indexed amount.

(g) For the purpose of determining eligibility for the low income tax credit in this section, income from all sources shall be used in determining the gross income of the taxpayer regardless of whether the income is taxable in Arkansas.

(h) A taxpayer is not eligible for the low income tax credit in this section if the taxpayer claims an exemption in § 26-51-306 or § 26-51-307, or if the taxpayer itemizes deductions.

**History.** Acts 1973, No. 4, §§ 1, 3; A.S.A. 1947, §§ 84-2090, 84-2092; Acts 1991, No. 95, § 2; 1993, No. 785, § 6; 1995, No. 1160, § 15; Acts 1997, No. 328, § 2; 2005, No. 675, § 1; 2005, No. 2187, § 1; 2007, No. 195, § 1; 2011, No. 736, § 1.

**Amendments.** The 2011 amendment substituted "January 1, 2011" for "January 1, 2007" in (a)(1) and (2); substituted "year 2010" for "year 2007" in the introductory paragraph of (b)(1) and (c)(1); redesignated former (b)(1) through (4) as present (b)(1)(A) through (D); substituted "is less than ten thousand six hundred eighty-two dollars (\$10,682)" for "does not exceed ten thousand two hundred dollars (\$10,200)" in (b)(1)(A); substituted "is less

than eighteen thousand twelve dollars (\$18,012)" for "does not exceed seventeen thousand two hundred dollars (\$17,200)" in (b)(1)(B); substituted "is less than twenty-one thousand six hundred seventy-seven dollars (\$21,677)" for "does not exceed twenty thousand seven hundred dollars (\$20,700)" in (b)(1)(C); substituted "is less than fifteen thousand one hundred eighty-five dollars (\$15,185)" for "does not exceed fourteen thousand five hundred dollars (\$14,500)" in (b)(1)(D); added (b)(2); redesignated former (c)(1) through (4) as present (c)(1)(A) through (D); in (c)(1)(A), substituted "ten thousand six hundred eighty-two dollars (\$10,682) or more" for "more than ten thousand two hundred dollars (\$10,200)" and "fourteen

thousand dollars (\$14,000) for "thirteen thousand five hundred dollars (\$13,500)"; in (c)(1)(B), substituted "eighteen thousand twelve dollars (\$18,012) or more" for "more than seventeen thousand two hundred dollars (\$17,200)" and "twenty-two thousand four hundred dollars (\$22,400)" for "twenty-one thousand four hundred dollars (\$21,400)"; in (c)(1)(D), substituted "fifteen thousand one hundred eighty-five dollars (\$15,185) or more" for "more than fourteen thousand five hundred dollars

(\$14,500)" and "nineteen thousand six hundred dollars (\$19,600)" for "nineteen thousand dollars (\$19,000)"; added (c)(2); rewrote (d); substituted "January 1, 2010" for "January 1, 2008" in (f); substituted "subdivision (c)(1)(A)" for "subdivision (c)(1)" in (f)(1); substituted "subdivision (c)(1)(B)" for "subdivision (c)(2)" in (f)(2); substituted "subdivision (c)(1)(C)" for "subdivision (c)(3)" in (f)(3); substituted "subdivision (c)(1)(D)" for "subdivision (c)(4)" in (f)(4); and added (f)(5).

## RESEARCH REFERENCES

**U. Ark. Little Rock L. Rev.** Annual Survey of Caselaw: Tax Law, 27 U. Ark. Little Rock L. Rev. 751.

## CASE NOTES

### In General.

Supreme Court of Arkansas declined to address state finance director's argument that the trial court erred when it concluded that subsection (d) of this section was unconstitutional because Acts 1995,

No. 1160, repealed the subsection; a constitutional challenge to a repealed statute raises a moot issue that will not be considered on appeal. *Weiss v. Chavers*, 357 Ark. 607, 184 S.W.3d 437 (2004).

### 26-51-302. [Repealed.]

**Publisher's Notes.** This section, concerning reduced tax tables, was repealed by Acts 2007, No. 195, § 2. The section

was derived from Acts 1973, No. 4, § 2; A.S.A. 1947, § 84-2091; Acts 1991, No. 95, § 3; Acts 1997, No. 328, § 3.

### 26-51-303. Exempt organizations.

(a) The following organizations shall be exempt from taxation under the Income Tax Act of 1929, § 26-51-101 et seq.:

(1) Fraternal benefit societies, orders, or associations:

(A) Operating under the lodge system or for the exclusive benefit of the members of a fraternity itself operating under the lodge system; and

(B) Providing for the payment of life, sick, accident, or other benefits to the members of such society, order, or association or their dependents;

(2) Domestic life and disability insurance companies and foreign insurance companies;

(3) Cemetery corporations;

(4) Business leagues, chambers of commerce, or boards of trade not organized for profit and no part of the net earnings of which inures to the benefit of any private stockholders or individuals;

(5) Civic leagues or organizations not organized for profit but operated exclusively for the promotion of social welfare;



(6) Farmers' or other mutual hail, cyclone, or fire insurance companies, or other domestic insurance companies writing lines of insurance other than those specified in subdivisions (a)(1) and (2) of this section, mutual ditch or irrigation companies, mutual or cooperative telephone companies, or like organizations of a purely local character, but only if eighty-five percent (85%) or more of the income of the organization consists solely of assessments, dues, and fees collected from members for the sole purpose of meeting losses and expenses;

(7) Farmers', fruit growers', or like organizations organized and operated as sales agent for the purpose of marketing the products of members and turning back to them the proceeds of sales, less the necessary selling expenses, on the basis of the quantity of produce furnished by them;

(8) Labor, agricultural, or horticultural organizations, no part of the net earnings of which inures to the benefit of any private stockholder or member;

(9) Corporations, trusts, and any community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda or otherwise attempting to influence legislation, and which does not participate in, or intervene in, including the publishing or distributing of statements, any political campaign on behalf of or in opposition to any candidate for public office; and

(10) A political organization that does not have political organization taxable income for the tax year under 26 U.S.C. § 527, as in effect on January 1, 2009.

(b)(1) Every organization claiming exemption under the Income Tax Act of 1929 shall notify the Revenue Division of the Department of Finance and Administration of its exempt status.

(2) Each such organization shall provide such additional information as the division shall also reasonably require for verification of the organization's exempt status.

(3) Provided, however, that any organization which is determined to be exempt from income taxation under the provisions of the Internal Revenue Code, 26 U.S.C. § 1 et seq. for any one (1) or more of the purposes set forth in subsection (a) of this section shall verify its exempt status hereunder by delivery to the division of a copy of the document declaring its exempt status under the Internal Revenue Code, 26 U.S.C. § 1 et seq.

**History.** Acts 1929, No. 118, Art. 2, § 6; Pope's Dig., §§ 7979, 14029; Acts 1941, No. 129, § 4; 1957, No. 259, § 1; 1973, No. 182, § 3; A.S.A. 1947, § 84-2006; Acts 1987, No. 1033, § 6; 1991, No. 1123, § 18; 1993, No. 1147, § 1804; 2009, No. 372, § 1.

**Publisher's Notes.** For definitions ap-

plicable to, and legislative intent concerning, this section, see §§ 26-26-1502 and 26-50-101.

**Amendments.** The 2009 amendment inserted (a)(10).

**Meaning of "Income Tax Act of 1929".** See note to § 26-51-101.

**Cross References.** Exemption for capital development corporations, § 15-4-1025.

### **26-51-304. Income from investments made by nonprofit organizations.**

Income derived from investments made by nonprofit organizations, whether or not the organization is organized or exists under the laws of this state, shall be exempt from state income tax where the income is for the sole purpose of providing pension and annuity benefits to members of the nonprofit organizations.

**History.** Acts 1965, No. 149, § 1; A.S.A. 1947, § 84-2006.1.

### **26-51-305. [Repealed.]**

**Publisher's Notes.** This section, concerning income from the sale of a home, was repealed by Acts 1997, No. 328, § 8, effective November 15, 1998. The section

was derived from Acts 1979, No. 523, § 1, 2; 1983, No. 379, § 7; A.S.A. 1947, §§ 84-2008.4, 84-2008.4n; Acts 1989, No. 826, § 16.

### **26-51-306. Compensation and benefits from military service.**

(a)(1)(A) For tax years beginning before January 1, 2007, no member of the armed services of the United States shall be liable for or required to pay any income tax on the first six thousand dollars (\$6,000) of service pay or allowances.

(B)(i) For tax years 2005 and 2006, enlisted personnel of the armed services of the State of Arkansas or of the United States shall not be liable for or required to pay any income tax on the first nine thousand dollars (\$9,000) of service pay or allowances.

(ii) For tax years 2005 and 2006, an officer or a warrant officer of the armed services of the State of Arkansas or of the United States is only entitled to the exemption in subdivision (a)(1)(A) of this section and is not entitled to the exemption in subdivision (a)(1)(B)(i) of this section.

(C) For tax years beginning on and after January 1, 2007, any member of the armed services of the State of Arkansas or the United States is not liable for or required to pay any income tax on the first nine thousand dollars (\$9,000) of service pay or allowance.

(2) The compensation and benefits are declared exempt, to the extent of the amounts provided in subdivision (a)(1) of this section, from the state income tax.

(3) All service pay or allowances of members of the armed services of the State of Arkansas or the United States in excess of the amounts provided in subdivision (a)(1) of this section shall be subject to the state income tax, unless otherwise provided for in this section.

(4)(A) Title 26 U.S.C. §§ 112 and 692, as in effect on January 1, 2007, regarding combat zone compensation of members of the armed forces and income taxes of members of the armed forces on death are adopted.

(B) The provisions contained in 26 U.S.C. § 112 are in addition to all other provisions contained in this section.

(b) Nothing in this section shall exempt from taxation the income of members of the armed services derived from other sources than their service pay and allowances.

(c) As used in this section, "armed services" means any and all members of the National Guard, reserve components of the armed forces, United States Army, Navy, Marine Corps, Coast Guard, Air Force, and any and all other branches of the military and naval forces or auxiliaries.

**History.** Acts 1943, No. 61, §§ 1-3; 386, § 1; 1997, No. 951, § 19; 2005, No. 1971, No. 226, § 1; 1973, No. 587, § 1; 29, § 1; 2005, No. 2187, § 2; 2007, No. A.S.A. 1947, §§ 84-2009 — 84-2011; Acts 160, § 1; 2007, No. 218, § 11. 1989 (3rd Ex. Sess.), No. 27, § 2; 1991, No.

#### RESEARCH REFERENCES

**Ark. L. Rev.** The Federal Soldiers' and Sailors' Civil Relief Act, 17 Ark. L. Rev. 16.

#### 26-51-307. Retirement or disability benefits.

(a)(1) The first six thousand dollars (\$6,000) of benefits received by any resident of this state from an individual retirement account or the first six thousand dollars (\$6,000) of retirement benefits received by any resident of this state from public or private employment-related retirement systems, plans, or programs, regardless of the method of funding for these systems, plans, or programs, shall be exempt from the state income tax.

(2)(A) Only individual retirement account benefits received by an individual retirement account participant after reaching fifty-nine and one-half (59½) years of age qualify for the exemption.

(B) The only other distributions or withdrawals from an individual retirement account that qualify for the exemption before the individual retirement account participant reaches fifty-nine and one-half (59½) years of age are those made on account of the participant's death or disability.

(C) All other premature distributions or early withdrawals including, but not limited to, those taken for medical-related expenses, higher education expenses, or a first-time home purchase do not qualify for the exemption.

(b)(1)(A) Except as provided in subdivision (b)(2) of this section, the exemption provided for in subsection (a) of this section for benefits received from an individual retirement account or from a public or private employment-related retirement system, plan, or program



shall be the only exemption from the state income tax allowed for benefits received from an individual retirement account or from any publicly or privately supported employment-related retirement system, plan, or program, excepting only benefits received under systems, plans, or programs which are by federal law exempt from the state income tax.

(B) No taxpayer shall receive an exemption greater than six thousand dollars (\$6,000) during any tax year under the provisions of this section.

(2) The provisions of this section shall not apply to retirement or disability benefits received under a plan, system, or fund described in § 26-51-404(b)(6).

(c)(1) Title 26 U.S.C. § 72, as in effect on January 1, 2009, is the sole method by which a recipient of benefits from an individual retirement account or from public or private employment-related retirement systems, plans, or programs may deduct or recover his or her cost of contribution to the plan when computing his or her income for state income tax purposes.

(2) A taxpayer shall not be allowed to deduct or recover any portion of the taxpayer's cost of contribution to the plan that the taxpayer:

(A) Has once deducted or recovered; or

(B) Would have been allowed to deduct or recover under any provision of law or court decision.

(d)(1) An individual who is sixty-five (65) years of age or older and who does not claim an exemption under subsection (a) of this section shall be entitled to an additional state income tax credit of twenty dollars (\$20.00).

(2) This credit is in addition to all other credits allowed by law.

**History.** Acts 1985, No. 486, §§ 1, 2; A.S.A. 1947, §§ 84-2008.5, 84-2008.6; Acts 1987, No. 521, § 3; 1989, No. 512, § 1; 1989 (3rd Ex. Sess.), No. 27, § 1; 1999, No. 817, § 1; 2001, No. 773, §§ 1, 2; 2005, No. 189, § 3; 2007, No. 218, § 12; 2009, No. 372, § 2.

**A.C.R.C. Notes.** Acts 2005, No. 189,

§ 1, provided: "The purpose of this act is to clarify current law regarding cost recovery for annuitants under the Income Tax Act of 1929, Arkansas Code § 26-51-101 et seq."

**Amendments.** The 2009 amendment substituted "January 1, 2009, is" for "January 2007, shall provide" in (c)(1).

## RESEARCH REFERENCES

**U. Ark. Little Rock L. Rev.** Legislative Survey, Taxation, 8 U. Ark. Little Rock L.J. 601.

Survey, Taxation, 14 U. Ark. Little Rock L.J. 401.

Survey of Legislation, 2001 Arkansas General Assembly, Tax Law, 24 U. Ark. Little Rock L. Rev. 613.

## CASE NOTES

## ANALYSIS

Constitutionality.  
Construction.

**Constitutionality.**

The state income tax discriminated against retirees of the governments of other states and military retirees based upon the source of the payment; therefore the tax violated 4 U.S.C. § 111 and the doctrine of intergovernmental tax immunity. *Pledger v. Bosnick*, 306 Ark. 45, 811 S.W.2d 286 (1991), cert. denied, 509 U.S. 921, 113 S. Ct. 3034 (1993), overruled, *State, Dep't of Fin. & Admin. v. Staton*, 325 Ark. 341, 942 S.W.2d 804 (1996) (decision under prior law).

Finding that the state income tax was unconstitutional, as applied to the retirees of the governments of other states and military retirees, was applied retroactively. *Pledger v. Bosnick*, 306 Ark. 45, 811 S.W.2d 286 (1991), cert. denied, 509 U.S. 921, 113 S. Ct. 3034 (1993), overruled, *State, Dep't of Fin. & Admin. v. Staton*, 325 Ark. 341, 942 S.W.2d 804 (1996).

Because the returns of after-tax contributions to a retirement plan were property, pursuant to Ark. Const. art. XVI, § 5, not income, the Department of Finance and Administration attempted tax of the returns under this section was unconstitutional given the prohibition in Ark. Const. amend. 47 that prohibited an ad valorem tax being levied on property; thus, the trial court properly granted par-

tial summary judgment in favor of the taxpayers. *Weiss v. McFadden*, 353 Ark. 868, 120 S.W.3d 545 (2003).

Emergency Income Tax Rule, which was enacted by the Department of Finance and Administration in response to the declaration that § 26-51-307(c) was unconstitutional, was also unconstitutional because it was clear that the General Assembly never intended I.R.C. § 72 be applied to recover of after-tax contribution in employment-related retirement plans. *Weiss v. Maples*, 369 Ark. 282, 253 S.W.3d 907 (2007).

**Construction.**

Subsection (c) of this section clearly provides that cost of contributions to a retirement plan may not be deducted in computing income for State tax purposes, and § 26-51-404(b)(24)(B) provides that annuity income from retirement plans is subject to this section rather than § 26-51-404(b); a retirement plan could contain pre-tax contributions upon which no income tax has ever been paid, employer contributions upon which no income tax has ever been paid, after-tax contributions upon which income tax has been paid, and the gain from pre-tax contributions and after-tax contributions upon which no income tax has ever been paid, and the above quoted statutes speak to income. *Weiss v. McFadden*, 353 Ark. 868, 120 S.W.3d 545 (2003).

**Cited:** *Weiss v. McFadden*, 356 Ark. 123, 148 S.W.3d 248 (2004).

**26-51-308. Trusts for qualified deferred compensation plans exempt.**

An organization or trust described in 26 U.S.C. § 401(a), as in effect on January 1, 2009, is exempt from income taxation under the Income Tax Act of 1929, § 26-51-101 et seq.

**History.** Acts 1959, No. 202, § 6; 1983, No. 379, § 14; A.S.A. 1947, § 84-2053; Acts 2007, No. 218, § 13; 2009, No. 372, § 3.

**Amendments.** The 2009 amendment substituted "2009" for "2007" and made minor stylistic changes.

**26-51-309. Charitable remainder trusts.**

(a) Title 26 U.S.C. § 664, as in effect on January 1, 2007, and the regulations of the Secretary of the Treasury promulgated under 26

U.S.C. § 664 and in effect on January 1, 2007, are adopted for the purpose of computing the tax liability of charitable remainder trusts and their beneficiaries under the Income Tax Act of 1929, § 26-51-101 et seq.

(b) Furthermore, any other provision of the federal income tax law and regulations which are necessary for interpreting and implementing 26 U.S.C. § 664 are adopted to the extent as in effect on January 1, 2007.

**History.** Acts 1993, No. 1147, § 1805; portion of military retirement pay was repealed by Acts 1989 (3rd Ex. Sess.), No. 1999, No. 1126, § 14; 2007, No. 218, § 14.

**Publisher's Notes.** Former § 26-51-309, concerning separate exclusion for from Acts 1987, No. 521, §§ 1, 2.

### **26-51-310. Foreign income exclusion.**

Title 26 U.S.C. §§ 911 and 912, as in effect on January 1, 2007, 26 U.S.C. § 911 regarding citizens or residents of the United States living abroad, and 26 U.S.C. § 912 regarding certain allowances for citizens or residents of the United States living abroad, are adopted for the purpose of computing Arkansas income tax liability.

**History.** Acts 1989, No. 826, § 2; 1999, § 1, provided that this act shall be known No. 1126, § 15; 2007, No. 218, § 15. and may be cited as the "Arkansas Income

**Publisher's Notes.** Acts 1989, No. 826, Tax Technical Revenue Act of 1989".

### **26-51-311. Qualified windmill blade manufacturing exemption.**

(a) A qualified windmill blade manufacturer that meets the criteria found in subsection (b) of this section is exempt from income taxes levied under the Income Tax Act of 1929, § 26-51-101 et seq., until December 31, 2033.

(b) A windmill blade manufacturer shall meet the following criteria in order to claim the income tax exemption provided in subsection (a) of this section:

(1) Shall be classified in the North American Industry Classification System (NAICS) Code 333611, as in effect January 1, 2007;

(2) Shall locate in the state before December 31, 2007;

(3) Shall expend a minimum of one hundred fifty million dollars (\$150,000,000) in the state within six (6) years of signing a financial incentive agreement with the Arkansas Economic Development Commission; and

(4) Shall hire a minimum of one thousand (1,000) employees in the state within six (6) years of signing a financial incentive agreement with the commission.

(c) If any of the criteria under subsection (b) of this section are not met, the income tax exemption in subsection (a) of this section shall expire in the year that the failure to meet any of the criteria for qualification occurs.



**History.** Acts 2007, No. 990, §§ 1, 2; 2009, No. 736, § 1.

**Amendments.** The 2009 amendment, in (b), deleted (b)(4), redesignated the subsequent subdivision accordingly, substi-

tuted "six (6)" for "four (4)" in (b)(3), substituted "Commission" for "Council" in (b)(3) and present (b)(4), substituted "six (6)" for "five (5)" in present (b)(4), and made a minor stylistic change.

### **26-51-312. Qualified windmill blade and windmill component manufacturing exemption.**

(a) A qualified windmill blade or windmill component manufacturer that meets the criteria under this section is eligible for a limited exemption from the income taxes levied under the Income Tax Act of 1929, § 26-51-101 et seq.

(b) To qualify for a limited exemption under this section from income taxes, a windmill blade or windmill component manufacturer shall:

(1) Be classified in the North American Industrial Classification System (NAICS) Code 333611 as in effect January 1, 2009;

(2) Locate in the state after January 1, 2008; and

(3) Sign a financial incentive agreement with the Arkansas Economic Development Commission after January 1, 2008.

(c) The limited income tax exemption allowed under this section is calculated based on the formula in subsection (d) of this section that comprises the following variables:

(1) Investment;

(2) Job creation;

(3) Tier status; and

(4) Wages.

(d) The number of years that a limited income tax exemption is granted to a qualified windmill blade or windmill component manufacturer is calculated as follows:

(1) Divide the proposed number of jobs to be created by one thousand (1,000);

(2)(A) Multiply the number calculated under subdivision (d)(1) of this section by thirty-five hundredths (0.35).

(B) The number calculated under subdivision (d)(2)(A) of this section is the weighting factor for job creation under subdivision (c)(2) of this section;

(3) Divide the proposed hourly wage by the lesser of the state or county average wage;

(4)(A) Multiply the number calculated under subdivision (d)(3) of this section by thirty-five hundredths (0.35).

(B) The number calculated under subdivision (d)(4)(A) of this section is the weighting factor for wages under subdivision (c)(4) of this section;

(5) Divide the proposed investment amount by one hundred fifty million dollars (\$150,000,000);

(6)(A) Multiply the number calculated under subdivision (d)(5) of this section by twenty hundredths (0.20).

(B) The number calculated under subdivision (d)(6)(A) of this section is the weighting factor for investment under subdivision (c)(1) of this section;

(7) Divide the tier number of the county in which the business locates by four (4);

(8)(A) Multiply the number calculated under subdivision (d)(7) of this section by ten hundredths (0.10).

(B) The number calculated under subdivision (d)(8)(A) of this section is the weighting factor for tier status that is associated with location under subdivision (c)(3) of this section;

(9) Take the sum of the numbers in subdivisions (d)(2)(A), (d)(4)(A), (d)(6)(A), and (d)(8)(A) of this section and multiply the sum by twenty-five (25); and

(10) The number calculated in subdivision (d)(9) of this section is the number of years of income tax exemption granted to the qualified windmill blade or windmill component manufacturer.

(e) If a qualified windmill blade or windmill component manufacturer that signs a financial incentive agreement with the commission after January 1, 2008, has employed a minimum of one thousand (1,000) persons during the last year of the income tax exemption provided for in the initial signed financial incentive agreement with the commission, then additional years of income tax exemption may be authorized by the commission.

(f) An income tax exemption allowed by this section shall not exceed twenty-five (25) years from the year that the exemption is first granted.

**History.** Acts 2009, No. 736, § 2.

#### SUBCHAPTER 4 — COMPUTATION OF TAX LIABILITY

##### SECTION.

- 26-51-401. Tax year — Accounting method.
- 26-51-402. Tax year — Basis for determining liability.
- 26-51-403. Income generally.
- 26-51-404. Gross income generally.
- 26-51-405. Partnership income.
- 26-51-406. Income to beneficiaries of trusts and estates.
- 26-51-407. Financial institutions.
- 26-51-408. Dividends of financial institutions taxable.
- 26-51-409. Federal Subchapter S adopted.
- 26-51-410. Inventory.
- 26-51-411. Gain or loss — Sales of property.
- 26-51-412. Gain or loss — Exchange of property.
- 26-51-413. Corporate liquidations.
- 26-51-414. Deferred compensation plans.

##### SECTION.

- 26-51-415. Deductions — Interest.
- 26-51-416. Deductions — Taxes.
- 26-51-417. Deductions — Alimony or separate maintenance.
- 26-51-418. Deductions — Disabled children.
- 26-51-419. Deductions — Charitable contributions.
- 26-51-420. Deductions — Education service cooperative contributions.
- 26-51-421. [Repealed.]
- 26-51-422. Deductions — Fair market value of donated artistic, literary, and musical creations.
- 26-51-423. Deductions — Expenses.
- 26-51-424. Deductions — Losses.
- 26-51-425. Deductions — Worthless debts.
- 26-51-426. Deductions — Reserve for bad debts or liabilities.

## SECTION.

- 26-51-427. Deductions — Net operating loss carryover.
- 26-51-428. Depreciation — Deductions — Expensing of property. [Effective until contingency in Acts 2007, No. 613, § 2 is met.]
- 26-51-428. Depreciation — Deductions — Expensing of property. [Effective if contingency in Acts 2007, No. 613, § 2 is met.]
- 26-51-429. Deductions — Depletion allowances.
- 26-51-430. Deductions — Standard deduction.
- 26-51-431. Items not deductible in net income computation.
- 26-51-432 — 26-51-434. [Repealed.]
- 26-51-435. Nonresidents or part-year residents.
- 26-51-436. Deductions — Limitations.
- 26-51-437. Miscellaneous itemized deductions.
- 26-51-438. [Repealed.]
- 26-51-439. Capitalization of certain expenses.

## SECTION.

- 26-51-440. Federal Subchapter M adopted.
- 26-51-441. [Transferred].
- 26-51-442. Sale of property to comply with conflict-of-interest requirements.
- 26-51-443. Allocation of unstated interest — Foregone interest.
- 26-51-444. Deductions — Soil and water conservation.
- 26-51-445. Adoption expenses.
- 26-51-446. Long-term intergenerational security.
- 26-51-447. Deductions — Tuition to post-secondary educational institutions.
- 26-51-448. Educational individual retirement accounts.
- 26-51-449. [Transferred].
- 26-51-450. Deductions — Small business guaranty fees.
- 26-51-451, 26-51-452. [Repealed.]
- 26-51-453. Health savings accounts.
- 26-51-454. [Transferred].
- 26-51-455. [Transferred].
- 26-51-456. [Transferred].

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**Cross References.** Family Savings Initiative Act, § 20-86-101 et seq.

Deductions for medically necessary foods, § 23-79-701 et seq.

**Preambles.** Acts 1929, No. 118, contained a preamble which read: "Whereas, this State has been neglectful of its Wards in the Charitable Institutions, which is a disgrace to the people of a Great Commonwealth, and it is imperative that additional Revenue should be provided to correct the fearful conditions which now exist; and

"Whereas, an equalization Fund should be provided to give equal Educational opportunities to the Boys and Girls of our Rural Communities; and

"Whereas, Agricultural and Industrial development is now being retarded because of a policy to secure practically all of the Revenue from an Ad Valorem Tax, thus penalizing and discouraging ownership of property, while many who enjoy the benefits of Government and have large incomes, pay almost nothing to support the Government;

"Therefore...."

Acts 1967, No. 62, contained a preamble, which read: "Whereas, contributions to political campaigns by taxpaying citizens is an effort on the part of the taxpayer to promote good government and democracy, and

"Whereas, it is believed that many more citizens would participate in government by offering campaign contributions to candidates of their choice if some tax relief could be obtained under the State income taxing system, and

"Whereas, it is also believed that the interests of many citizens in government may be aroused by allowing such deduction for political campaign contributions and the State and all of its political subdivisions would profit by the interest and participation of many more people...."

**Effective Dates.** Acts 1929, No. 118, § 44: approved Mar. 9, 1929. Emergency clause provided: "It is hereby ascertained and declared that the Hospital for Nervous Diseases is inadequate to properly care for all who should be confined therein, to the end there are many persons of unsound mind at large, who are a



menace to the public safety, and that said Hospital as now equipped is inadequate to restrain those insane persons who are confined therein, so that there is danger of their escaping at any time and imperil the safety of the public; that there are hundreds and hundreds of persons desiring to enter the Tuberculosis Sanitarium who cannot now be accommodated there, because that institution has neither room, beds nor facilities for additional people, as a result said consumptives at large are spreading the disease amongst their families and friends; that the funds to be raised by this Act will be used for the better care of the charitable wards of this State and to provide better for the rural schools of this State; and it is therefore ascertained and declared that it is necessary for the public peace, health and safety that this Act go into immediate operation, and accordingly it is provided that this act shall take effect and be in force from and after its passage."

Acts 1939, No. 140, § 8: Feb. 25, 1939. Emergency clause provided: "It having been ascertained that this Act is necessary to better enforce the collection of the Income Tax Law, which will result in increased financial benefits to the people of this State, an emergency is hereby declared to exist, and this Act being necessary for the immediate preservation for the public peace, health and safety, shall take effect and be in full force from and after its passage and approval."

Acts 1939, No. 324, § 4: Mar. 15, 1939. Emergency clause provided: "It is hereby found and declared that this Act shall be necessary to preserve the peace, health and safety of the people of this State, and that therefore, an emergency exists, and this Act shall be in effect, subject to the limitations contained in Section 2 hereof, immediately upon its passage and approval."

Acts 1941, No. 129, § 8: approved Mar. 11, 1941. Emergency clause provided: "Because of the various social problems caused by the failure of the State to provide adequate relief for its aged citizens, and it appearing that there is a dire need for additional funds to meet the requirements of the Social Security Act and give additional revenue to this State and because the old folks in this State are suffering by reason of the failure of the State to secure funds with which to pay Old Age

Pensions, and [an] emergency is hereby found to exist and is so declared by the Legislature of Arkansas; that this Act being necessary for the immediate preservation of the public peace, health and safety, shall be in full force and effect from and after its passage."

Acts 1947, No. 135, § 9: approved Mar. 3, 1947. Emergency clause provided: "It has been found and is hereby declared by the General Assembly of the State of Arkansas that existing laws providing for the distribution of state revenues are such that a moderate diminution of certain of the revenues would have the effect of curtailing the activities of certain necessary agencies of the State Government, and that only the provisions of this Act will correct a situation which otherwise may deprive the citizens of this State from receiving the benefits which the operation of the State Government contemplates. Therefore, an emergency is hereby declared to exist, and this act being necessary for the preservation of the public peace, health and safety shall take effect and be in full force from and after its passage."

Acts 1947, No. 335, § 7, provided that it is declared to be the intention of the General Assembly that this act shall be applicable to the income year 1946, calendar or fiscal, and for each year thereafter.

Acts 1947, No. 335, § 8: Mar. 28, 1947. Emergency clause provided: "It has been ascertained by the Legislature that adjustments and revisions of the present income tax laws are necessary to correct the method of computing and reporting income to the State for purposes of taxation thereof and to facilitate the enforcement of present laws relating thereto, and this law being necessary to remedy this situation and to provide for the public peace, health and safety and well being, an emergency is hereby declared to exist and this Act shall be in full force and effect after its passage and approval."

Acts 1949, No. 234, § 2, provided that the provisions of this act shall be applicable to tax years on and after January 1, 1949, as the term "tax year" is defined in § 26-51-102.

Acts 1949, No. 234, § 4: Mar. 3, 1949. Emergency clause provided: "Whereas, it has been ascertained that the increased cost of living has placed heavier demands upon the funds of the State of Arkansas

than are presently available, and that unless these available funds are increased and supplemented, the necessary functions of our state government are in serious danger of not providing for the necessary protection and benefit for which it is so designed and intended; and

"Whereas, it has been ascertained that the provisions of this Act will correct this situation,

"Now therefore, in order to maintain the present facilities of our government, and in order to provide for necessary funds therefor, and this Act being necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, and this Act shall be in full force and effect from and after its passage and approval."

Acts 1951, No. 124, § 2, provided that the provisions of this act shall be applicable to tax years on and after January 1, 1951, as the term "tax year" is defined in § 26-51-102.

Acts 1951, No. 124, § 3: Feb. 20, 1951. Emergency clause provided: "Whereas, it has been ascertained that considerable confusion exists among the citizens of this State regarding the computation of their Federal and State income taxes, and there is much duplication of time and effort in computing their taxes for these respective branches of the government, and

"Whereas, the desirability of making uniform the preparation of Federal and State income tax returns is evidenced by the fact that it would result in a more expeditious and efficient method of filing and handling tax returns,

"Now, Therefore, in order to increase the efficiency of our government and render aid to the citizens of this State, this Act being necessary for the preservation of public peace, health, and safety, an emergency is hereby declared to exist, and this Act shall be in full force and effect from and after its passage and approval."

Acts 1953, No. 230, § 2, provided that the provisions of the act shall be applicable to tax years on and after January 1, 1953, as the term "tax year" is defined in § 26-51-102.

Acts 1957, No. 144, § 4, provided that the provisions of this act shall be applicable to tax years on and after January 1, 1957, as the term "tax year" is defined in § 26-51-102.

Acts 1957, No. 550, § 2, provided that the provisions of this act shall apply to income earned on and after January 1, 1957.

Acts 1959, No. 202, § 7: Jan. 1, 1959.

Acts 1965, No. 499, §§ 2, 3: Jan. 1, 1965. Emergency clause provided: "Whereas, it has been found that great inequities will exist in situations where the owner of property containing mineral deposits upon which there is a depletion allowance provided by the Arkansas Income Tax Law where such owner incorporates and transfers the property to a corporate entity, and which might cause the loss of the depletion allowance, and this Act being necessary to remedy such, an emergency is declared to exist, and this Act being necessary for the preservation of the public peace, health and safety, shall be in full force and effect from and after its passage." Approved March 20, 1965.

Acts 1965, No. 570, §§ 2, 3: Jan. 1, 1965. Emergency clause provided: "Whereas it is necessary to remedy inequitable situations existing in the Income Tax Law as to dividends received by a parent corporation from a subsidiary corporation in which it owns at least ninety-five percent (95%) of the stock, and this Act being necessary for the preservation of the public peace, health and safety, an emergency is found to exist, and this Act shall be in full force and effect from and after its passage and approval." Approved March 24, 1965.

Acts 1967, No. 25, § 6: Feb. 1, 1967. Emergency clause provided: "The General Assembly of the State of Arkansas hereby finds and determines that considerable confusion exists among the citizens of this State regarding the computation of their Federal and State Income Taxes; that there is much duplication of time and effort in computing their income taxes for these respective branches of the government; that the desirability of making uniform the preparation of Federal and State income tax returns is evidenced by the fact that it would result in a more expeditious and efficient method of filing and handling tax returns and that in order to increase the efficiency of our government and render aid to the citizens of this State, this Act being necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist,



and this Act shall be in full force and effect from and after its passage and approval."

Acts 1967, No. 95, § 5: Feb. 14, 1967. Emergency clause provided: "The General Assembly of the State of Arkansas hereby finds and determines that considerable confusion exists among the citizens of this State regarding the computation of their Federal and State income taxes; that there is much duplication of time and effort in computing their income taxes for these respective branches of the government; that the desirability of making uniform the preparation of Federal and State income tax returns is evidenced by the fact that it would result in a more expeditious and efficient method of filing and handling tax returns and that in order to increase the efficiency of our government and render aid to the citizens of this State, this Act being necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, and this Act shall be in full force and effect from and after its passage and approval."

Acts 1968 (1st Ex. Sess.), No. 22, § 2, provided that the provisions of section 1 would become effective on January 1 for the income year beginning on January 1, 1967.

Acts 1968 (1st. Ex. Sess), No. 22, § 5: Jan. 1, 1967. Emergency clause provided: "It is hereby found and determined by the General Assembly that Act 95 of 1967 was enacted and became effective on February 14, 1967, and provided for the application of Section 213 of the Federal Internal Revenue Code of 1954, amended and in effect on December 1, 1966, in computing the Arkansas Income Tax; that since December 1, 1966, there have been substantial changes in the application of Section 213 of the Federal Internal Revenue Code of 1954, as amended; and that only by the immediate passage of this Act can the relevant Arkansas Income Tax provisions be brought into conformity with the federal income tax provisions. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in effect from and after January 1, 1967."

Acts 1969, No. 236, § 6, provided that the Act applied to the annual corporate income tax liability of domestic life insurance companies for taxable years following December 31, 1968. The act became

law without governor's signature on March 12, 1969.

Acts 1969, No. 462, § 4: Jan. 1, 1969. Emergency clause provided: "It is hereby found and determined by the General Assembly that the imposition of an income tax on the above funds would create a hardship on the injured and unemployed. Therefore, an emergency is hereby declared to exist and this Act, being necessary for the immediate preservation of the public peace, health and safety, shall be in full force and effect from and after January 1, 1969."

Acts 1971, No. 226, § 5: Mar. 4, 1971. Emergency clause provided: "It is hereby found and determined by the General Assembly that present laws exempt service pay of members of the Armed Forces from the State Income Tax and that in order to properly recognize and regard members of the Armed Forces for their loyal services it is essential that such exemption also be extended to include retirement pay and disability benefits of retired service members, and that the immediate passage of this Act is necessary to accomplish such purpose. Therefore, an emergency is hereby declared to exist and this Act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1971, No. 457, § 4: Mar. 30, 1971. Emergency clause provided: "It is hereby found and determined by the General Assembly that at present contributions made to a self-employed person's retirement system are not deductible under Arkansas Income Tax; that under a qualified pension and profit sharing plan the contributions made by an employer to such a plan would be deductible in the year in which such contribution is made; that many self-employed persons have established Keogh or H.R. 10 plans but at present receive no deduction for the contributions made to such plans; and that only by the passage of this Act can these contributions be made deductible. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall become effective from and after its passage and approval."

Acts 1973, No. 182, §§ 9, 10: Jan. 1, 1973. Emergency clause provided: "It is



hereby found and determined by the General Assembly that the present law relative to the taxation of banks and savings and loan associations is somewhat vague and indefinite, that such institutions should pay the same taxes as other business corporations in the State, and this Act is immediately necessary to clarify the laws with respect to the taxation of financial institutions and to assure that such institutions pay the same taxes as other business corporations. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval." Approved February 22, 1973.

Acts 1975, No. 271, § 5: Feb. 28, 1975. Emergency clause provided: "It is hereby found and determined by the General Assembly that at present contributions made to a self-employed person's retirement system are not deductible under Arkansas Income Tax; that under a qualified pension and profit sharing plan the contributions made by an employer to such a plan would be deductible in the year in which such contribution is made; that many self-employed persons have established Keogh or H.R. 10 plans but at present receive no deduction for the contributions made to such plans; and that only by the passage of this Act can these contributions be made deductible. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall become effective from and after its passage and approval."

Acts 1975, No. 676, § 2, provided that the provisions of this act shall apply to all corporate income returns for income years beginning on and after January 1, 1975, and to all corporate income tax returns filed for years prior to January 1, 1975, that are pending on the effective date of this act and on which taxes have not been paid.

Acts 1975, No. 676, § 4: Mar. 31, 1975. Emergency clause provided: "It is hereby found and determined by the General Assembly that the present corporate income tax law does not permit one domestic corporation which acquires the assets of another domestic corporation to succeed to the net operating loss carryover of the

acquired corporation under any circumstances; that the absence of any such authority creates a serious hardship on some acquiring corporations and that provision should be made as soon as possible for permitting such acquiring corporations to succeed to the net operating loss carryover of the acquired corporations under specified conditions, and that this Act is designed to accomplish this purpose. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1975, No. 683, § 2: applicable with respect to income received during the income year beginning January 1, 1975, and each income year thereafter.

Acts 1975, No. 683, § 4: Apr. 1, 1975. Emergency clause provided: "It is hereby found and determined by the General Assembly that the present law exempts annuities received by residents of this State from any federal retirement system or any state, county, municipal or school district retirement system in the State of Arkansas to the extent of the first Six Thousand Dollars (\$6,000.00) thereof, from the Arkansas Income Tax but does not provide a similar exemption for annuities received by residents of this State from state, county, municipal and school district retirement systems in other states; that there are many citizens in this State who have retired from publicly-supported retirement systems in other states and have moved to the State of Arkansas who are now required to pay Arkansas income tax on the annuity income received by such citizens from the publicly-supported retirement systems in other states, and that this is a serious inequity and creates an undue hardship on our retired citizens who move to Arkansas from other states; that this Act is designed to give equal treatment to annuity income derived from publicly supported retirement systems of other states as is given to annuity income derived from publicly supported retirement systems in the State of Arkansas, and that this Act should be given effect immediately. Therefore, an emergency is hereby declared to exist, and this Act being necessary for the immediate preservation of the public peace, health, and

safety shall be in full force and effect from and after its passage and approval."

Acts 1975, No. 972, § 2, provided that the provisions of this act shall be applicable to income earned in calendar year 1975, upon which tax is due and payable in 1976, and each year thereafter.

Acts 1977, No. 898, § 4, provided that the provisions of this act shall be applicable to income earned in calendar year 1977, upon which tax is due and payable in 1978, and each year thereafter.

Acts 1979, No. 414, § 5: Mar. 20, 1979. Emergency clause provided: "It is hereby found and determined by the General Assembly that under Act 55 of 1972, unlike under the Federal Internal Revenue Code of 1954, as amended, small business corporations having more than ten (10) but fifteen (15) or fewer shareholders are required to file a corporate income tax return under Arkansas Income Tax Law and pay a corporate income tax on income earned by the corporation during the taxable year; that the shareholders of such corporations also are required to pay a personal income tax on the dividends received by such shareholders from such corporations; that such taxation unduly hampers and discourages the formation of such small business corporations for the purpose of doing business and endangers existing elections of small business corporations whose shareholders may increase to more than ten (10) because of death or other uncontrollable events; and that in order properly to encourage businessmen to incorporate and assure them that they will be fairly and equitably taxed, it is necessary that this Act be enacted immediately. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health, and safety shall become effective from and after its passage and approval."

Acts 1979, No. 740, § 2, provided that the provisions of this act shall apply to all corporate income tax returns for income years beginning on or after January 1, 1979, and to all corporate income tax returns filed for years prior to January 1, 1979, that are pending on the effective date of this act and on which the taxes have been paid, under protest, or on which the taxes have not been paid.

Acts 1979, No. 740, § 4: Apr. 6, 1979. Emergency clause provided: "It is hereby

found and determined by the General Assembly that there is an uncertainty as to the tax treatment of contributions made to a self-employed person's retirement plan or annuity and that only by the passage of this Act can this uncertainty be resolved and this Act being necessary for the immediate preservation of the public peace, health and safety shall become effective from and after its passage and approval."

Acts 1979, No. 912, § 4: Apr. 16, 1979. Emergency clause provided: "It is hereby found and determined by the General Assembly that the present corporate income tax law discriminates against foreign corporations and the constitutionality of the law is questionable. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1981, No. 914, § 9: Dec. 31, 1980. Emergency clause provided: "It is hereby found and determined by the General Assembly that certain provisions of the State's income tax laws that have counterparts in the Federal income tax laws do not coincide with recent amendments to the Federal income tax laws; that clarification needs to be made to provisions of the Arkansas Tax Procedure Act (Act 401 of 1979) with regard to the statute of limitations on assessments, the judicial review of contested assessments and the automatic assertion of the 10% negligence penalty (as apparently approved by the Supreme Court in its decision in *Great Lakes Chemical Co. v. Wooten*, 266 Ark. 511, 514 (1979) which decision was rendered after the adoption by the General Assembly of Act 401 of 1979, but before the effective date of that Act); and that this Act is immediately necessary to make the Arkansas income tax law conform with the Federal income tax law, to clarify any possible question as to the applicability of the Statute of Limitations on assessment and judicial review of contested assessments, and to stop the automatic assessment of the 10% negligence penalty on any deficiency in tax determined by the Commissioner. Therefore, an emergency is hereby declared to exist and this Act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect for



all periods beginning after December 31, 1980."

Acts 1983, No. 51, § 5: Feb. 3, 1983. Emergency clause provided: "It is hereby found and determined by the General Assembly that under Act 414 of 1979, unlike under the Federal Internal Revenue Code of 1954, as amended, small business corporations meeting the requirements of said Code, but having more than fifteen (15) shareholders, are required to file a corporate income tax return under Arkansas Income Tax Law and pay a corporate income tax on income earned by the corporation during the taxable year; that the shareholders of such corporations also are required to pay a personal income tax on the dividends received by such shareholders from such corporations; that such taxation unduly hampers and discourages the formation of such small business corporations for the purpose of doing business and endangers existing elections of small business corporations whose shareholders may increase to more than fifteen (15) because of death or other uncontrollable events; and that in order properly to encourage individuals to incorporate their businesses and assure them that they will be fairly and equitably taxed, it is necessary that this Act be enacted immediately. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health, and safety shall become effective from and after its passage and approval."

Acts 1983, No. 379, § 27: Dec. 31, 1982. Emergency clause provided: "It is hereby found and determined by the General Assembly that certain provisions of the State's income and estate tax laws that have counterparts in the Federal tax laws do not coincide with recent amendments and changes to the Federal tax laws; and that this Act is immediately necessary to make the Arkansas tax laws conform with the Federal tax laws to clarify any possible question of confusion caused by such differences. Therefore, an emergency is hereby declared to exist and this Act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect for all income years after, or estate tax return filing dates coming after, December 31, 1982."

Acts 1983, No. 854, § 6: Mar. 28, 1983. Emergency clause provided: "It is found and determined by the General Assembly that certain provisions of the State's income tax laws, regarding depreciation and the recovery of a taxpayer's capital expenditures for an investment in depreciable property, are in conflict with a single simplified method of capital cost recovery for depreciable property, as provided by Federal income tax laws; and such conflict has caused unnecessary conflict between the taxpayers and citizens of this State and the State employees administering the State taxing statutes, therefore, an emergency is hereby declared to exist and this Act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect upon its passage and approval."

Acts 1985 (1st Ex. Sess.), No. 20, § 4: June 26, 1985. Emergency clause provided: "It is hereby found and determined by the General Assembly that Act 848 of 1985 as it was finally enacted phases in over a three year period the federal capital gains treatment for Arkansas income tax purposes beginning in 1987; that it was intended that the federal capital loss provisions likewise not be implemented until 1987 but that intent was not articulated in Act 848; that Act 848 adopts the federal capital loss provisions immediately instead of 1987; that Act 848 becomes effective on June 28, 1985; and therefore this Act should be given immediate effect in order to make the technical correction in a timely manner and thereby avoid unintended consequences. Therefore an emergency is hereby declared to exist and this Act, being necessary for the preservation of the public peace, health and safety, shall be in full force and effect from and after its passage and approval."

Acts 1985 (1st Ex. Sess.), No. 32, § 4: June 26, 1985. Emergency clause provided: "It is hereby found and determined by the General Assembly that Act 848 of 1985 as it was finally enacted phases in over a three year period the federal capital gains treatment for Arkansas income tax purposes beginning in 1987; that it was intended that the federal capital loss provisions likewise not be implemented until 1987 but that intent was not articulated in Act 848; that Act 848 adopts the federal capital loss provisions immediately instead of 1987; that Act 848 becomes effective



tive on June 28, 1985; and therefore this Act should be given immediate effect in order to make the technical correction in a timely manner and thereby avoid unintended consequences. Therefore an emergency is hereby declared to exist and this Act, being necessary for the preservation of the public peace, health and safety, shall be in full force and effect from and after its passage and approval."

Acts 1987, No. 382, § 33, provided that, except as provided in § 26-18-303(a)(2)(B) and (c), regarding confidentiality of tax returns and other tax information, which shall apply retroactively to any pending suit, action, or prosecution, administrative or judicial, for which no final judgment has been rendered by a court of competent jurisdiction and all future suits, actions, and prosecutions, the provisions of this act shall apply to income years beginning on and after January 1, 1987.

Acts 1987, No. 382, § 34: Mar. 24, 1987. Emergency clause provided: "It is hereby found and determined by the General Assembly of the State of Arkansas that the federal government has recently made major changes in the federal income tax law; that for simplicity of administration and equity various provisions of the federal law should be adopted for Arkansas Income Tax purposes; and that for the effective administration of this Act, the Act should become effective immediately. Therefore an emergency is hereby declared to exist and this Act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1987 (1st Ex. Sess.), No. 48, § 4: June 26, 1987. Emergency clause provided: "It is hereby found and determined by the General Assembly of the State of Arkansas that the federal government has recently made major changes in the federal income tax law; that for simplicity of administration and equity various provisions of the federal law should be adopted for the Arkansas Income Tax purposes; and that for the effective administration of this Act, the Act should become effective immediately. Therefore an emergency is hereby declared to exist and this Act being immediately necessary for the preservation of the public peace, health and safety

shall be in full force and effect from and after its passage and approval."

Acts 1989, No. 583, § 8: Mar. 15, 1989. Emergency clause provided: "It is hereby found and determined by the General Assembly that present law has no provisions for registered investment companies; that such laws are needed to properly govern investment companies and to clarify the status of investment companies; and that adoption of Subchapter M of the Internal Revenue Code of 1986 is necessary to provide uniform tax laws on both the State and Federal levels for investment companies. Therefore, an emergency is hereby declared to exist and this act being necessary for the preservation of public peace, health, and safety shall be in full force and effect from and after its passage and approval."

Acts 1989, No. 615, § 4: Mar. 16, 1989. Emergency clause provided: "It is hereby found and determined by the General Assembly that net operating losses which occurred during any income year beginning before January 1, 1987 may be carried forward for only three years; that net operating losses which occur in income years beginning on and after January 1, 1987 may be carried forward for five (5) years; that due to the weather, commodity prices and other circumstances the farm economy in this State has suffered devastating losses since 1980, and the farmers should be allowed to carry over for five (5) years the losses they have incurred since 1980; that this Act is intended to change from three (3) years to five (5) years the period of time in which losses which occurred since December 31, 1980 may be carried forward even to the extend of retroactive application; that this Act will grant some relief to the farm sector of this State and should therefore be given immediate effect. Therefore, an emergency is hereby declared to exist and this Act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1989, No. 826, § 36, provided that the provisions of that act shall be in full force and effect for all income years beginning on or after January 1, 1989.

Acts 1991, No. 95, § 9: Feb. 11, 1991. Emergency clause provided: "It is hereby found and determined by the General Assembly that certain low income working

taxpayers and senior citizens bear a disproportionate share of the state tax burden; that unless this act becomes effective immediately upon passage irreparable harm will occur to low income taxpayers of this state; and that this act should become effective immediately upon passage. Therefore, an emergency is hereby declared to exist and this Act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1991, No. 685, § 11: Jan. 1, 1991.

Acts 1991, No. 686, § 2: applicable for income years beginning on or after January 1, 1991.

Acts 1991, No. 687, § 2: effective for all income years beginning on and after January 1, 1991.

Acts 1993, No. 453, § 5: Mar. 11, 1993. Emergency clause provided: "It is hereby found and determined by the General Assembly that it is unclear whether Education Service Cooperatives are instrumentalities of this state and therefore whether donations to them are tax deductible; that private donations to these entities should be encouraged; that some donations have been made during the calendar year 1992 on the assumption that the donations are in fact deductible; that this act specifically so provides and should be given immediate effect so that donations made during the 1992 calendar year will be deductible for state income tax purposes. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1993, No. 785, § 20: amendments to subchapters 1, 4, 5, 9, and 10 effective for taxable years beginning on and after January 1, 1993.

Acts 1993, No. 785, § 24: Mar. 30, 1993. Emergency clause provided: "It is hereby found and determined that certain changes are necessary to the Arkansas income tax laws; that these changes are necessary immediately in order to maintain the efficient administration of the Arkansas income tax laws; and that this act is necessary to effectuate that purpose. Therefore, an emergency is hereby declared to exist and this act being necessary for the preservation of public peace,

health and safety shall be in full force and effect from and after its passage and approval."

Acts 1995, No. 495, § 4: applicable for taxable years beginning on or after January 1, 1996.

Acts 1995, No. 535, § 4: applicable for taxable years beginning on or after January 1, 1996.

Acts 1995, No. 560, § 3: effective for taxable years beginning on or after January 1, 1995.

Acts 1995, No. 560, § 7: Mar. 8, 1995. Emergency clause provided: "It is hereby found and determined that in order to preserve and protect Arkansas' water and wetland resources, including conserving, enhancing, and restoring the acreage, quality, biological diversity and ecosystem sustainability of the Arkansas Wetlands, certain changes to the Arkansas income tax laws regarding agricultural cost share programs and the method of expensing soil and water conservation practices are necessary; that these changes are necessary immediately in order to protect and preserve Arkansas' water resources and the restoration and creation of wetlands; and that this act is necessary to effectuate that purpose. Therefore, an emergency is hereby declared to exist and this act being necessary for the preservation of public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1995, No. 586, § 8: Mar. 13, 1995. Emergency clause provided: "It is hereby found and determined by the General Assembly that establishment of qualified medical companies in this State will result in numerous benefits including industrial diversification, broadening of the economic base, the creation of jobs and benefits to the residents of this State through new products and processes; that this Act would provide assistance to qualified medical companies and at the same time create benefits to the State and its residents; that this Act would make state law concerning qualified medical companies' net operating loss carry forward provisions compatible with the Internal Revenue Code of the United States; and that the need for the assistance set forth in this Act is necessary in order to provide for assistance to qualified medical companies. Therefore, an emergency is hereby declared to exist and this act being neces-



sary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1995, No. 1160, § 42: §§ 1, 2(a), and 3 through 13: applicable for taxable years beginning on or after January 1, 1995.

Acts 1995, No. 1160, § 46: Apr. 11, 1995. Emergency clause provided: "It is hereby found and determined by the General Assembly that certain changes are necessary to the Arkansas tax laws; that these changes are necessary immediately in order to maintain the efficient administration of the Arkansas income tax laws; and that this act is necessary to effectuate that purpose. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1997, No. 328, § 11: effective on and after November 15, 1998 unless a constitutional amendment or initiated act shall be approved or an act of the General Assembly shall become law before that date which exempts food, either wholly or partially, from the Arkansas gross receipts tax. If a constitutional amendment, initiated act, or act of the General Assembly exempting food is not approved, then the provisions of Section 1, 2, 3, 4, 6, 7, and 8 of this Act shall be effective for tax years beginning on and after January 1, 1998; the provisions of Section 5 of this Act shall be effective as provided in that section; and the provisions of Section 9 of this Act shall be effective as provided in Section 10.

Acts 1997, No. 951, § 34, provided: "Sections 1 through 24, 32 and 33 shall be effective for tax years beginning on and after January 1, 1997. However, it is the intent of this Act that those portions of the Internal Revenue Code adopted by this Act which for federal tax purposes do not become effective until some time after January 1, 1997, shall also not become effective for state tax purposes until the same time."

Acts 1997, No. 951, § 38: March 31, 1997. Emergency clause provided: "It is hereby found and determined by the General Assembly that current state tax laws are unclear or confusing, creating difficulty for taxpayers seeking to comply with

these tax laws; that the changes made by Sections 25 through 31 of this bill are necessary to provide adequate direction to those taxpayers and to maintain the efficient administration of the Arkansas tax laws; and that the provisions of Sections 25 through 31 of this Act are necessary to effectuate that purpose. Therefore, an emergency is hereby declared to exist and the provisions of Sections 25 through 31 of this Act being necessary for the preservation of the public peace, health, and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, Sections 25 through 31 shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, Sections 25 through 31 shall become effective on the date the last house overrides the veto."

Acts 1997, No. 1000, § 30: July 2, 1997. Emergency clause provided: "It is hereby found and determined by the General Assembly that the laws of this State concerning the insurance matters covered in this Omnibus Act are inadequate for the protection of the public. Further, the laws of this State as to Small Employer Health Insurance are not consistent with federal laws, particularly the Health Insurance Portability and Accountability Act of 1996 of the U.S. Congress; and the immediate passage of this Act is necessary in order to provide for the protection of the public. Therefore, an emergency is hereby declared to exist and this Act being immediately necessary for the preservation of the public peace, health and safety shall be in effect from and after July 2, 1997. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

Acts 1997, No. 1075, § 2: effective for tax years beginning on or after January 1, 1998.

Acts 1997, No. 1189, § 2: effective for all tax years beginning on or after January 1, 1997.

Acts 1999, No. 144, § 2: effective for tax years beginning on and after January 1, 1999.



Acts 1999, No. 513, § 3: effective for tax years beginning on and after January 1, 1999.

Acts 1999, No. 1126, § 43: effective for tax years beginning on or after January 1, 1999.

Acts 1999, No. 1217, § 16: July 1, 1999.

Acts 1999, No. 1217, § 20: Apr. 7, 1999. Emergency clause provided: "It is hereby found and determined by the Eighty-second General Assembly that the first individuals to be affected by the two (2) year lifetime limit on Transitional Employment Assistance will soon reach that limit. This act will help those individuals to make the transition from welfare to long-term economic self-sufficiency. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

Acts 2001, No. 773, § 12: effective for tax years beginning on and after January 1, 2001.

Acts 2001, No. 1227, § 3: effective for tax years beginning on and after January 1, 2001.

Acts 2001, No. 1558, § 2: effective for tax years beginning on and after January 1, 2001.

Acts 2003, No. 218, § 3: effective for tax years beginning on and after January 1, 2003.

Acts 2003, No. 218, § 4: Feb. 26, 2003. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that recent changes to the federal Internal Revenue Code have resulted in a significant disparity between state and federal retirement plan laws; this disparity has increased the state's administrative burden and has led to confusion and anxiety among Arkansas taxpayers. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is

neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

Acts 2003, No. 662, § 2: effective for tax years beginning on and after January 1, 2003.

Acts 2003, No. 663, § 14: effective for tax years beginning on and after January 1, 2003.

Acts 2003, No. 997, § 2: effective for tax years beginning on or after January 1, 2003.

Acts 2003, No. 1286, § 2: effective for tax years beginning on or after January 1, 2004.

Acts 2005, No. 53, § 2: Feb. 1, 2005. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that the Indian Ocean tsunami of December 26, 2004, has created an urgent need for financial relief efforts; that citizens of the State of Arkansas have made contributions toward the relief efforts in response to this great need; that such contributions made in January 2005 to the relief efforts should be treated for income tax purposes as made on December 31, 2004, if a taxpayer chooses; and that this act is immediately necessary so that taxpayers may claim the deduction on their 2004 income tax returns. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

Acts 2005, No. 94, § 6: effective for tax years beginning on or after January 1, 2004.

Acts 2005, No. 94, § 7: Feb. 10, 2005. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that that health savings accounts allow taxpayers to better control their healthcare expenses; that Congress has provided for income tax benefits to taxpayers utilizing health savings accounts; and that Arkansas taxpayers

cannot receive similar state income tax benefits until this act becomes effective. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

Acts 2005, No. 261, § 2: effective for tax years beginning on or after January 1, 2005.

Acts 2005, No. 675, § 17: effective for tax years beginning on or after January 1, 2005.

Acts 2007, No. 196, § 2: Mar. 5, 2007. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that the federal Pension Protection Act of 2006 provides that for taxable years 2006 and 2007, taxpayers seventy and one-half (70 1/2) years of age and older may make a charitable distribution in an amount up to one hundred thousand dollars (\$100,000) from an Individual Retirement Account, which charitable distribution shall not be included in the gross income for the taxpayer for the taxable year. The federal Pension Protection Act of 2006, only applicable for taxable years 2006 and 2007, encourages benefactors to increase charitable giving by providing tax-free roll-overs. Since the federal Pension Protection Act of 2006 is temporary it is necessary to immediately adopt the language of Internal Revenue Code Section 408(d)(8) to allow for parity in preparing

federal and state income tax returns. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

Acts 2007, No. 613, § 2, provided: "The provisions of this act shall not be effective until the Chief Fiscal Officer of the State certifies that additional funding has been provided to state general revenues from other funding sources and is available for use during fiscal year 2008 and fiscal year 2009 in an amount sufficient to replace the general revenue reduction for each of the fiscal years 2008 and 2009 that would result from the adoption of the provisions of section 179 of the Internal Revenue Code, as in effect on January 1, 2007, as provided by this act."

Acts 2009, No. 372, § 25, provided: "This act is effective for tax years beginning on and after January 1, 2009."

Acts 2011, No. 787, § 36, provided: "Subdivision (14)(B) of Section 12, subdivision (a)(1)(B) of Section 16, Section 17, Section 20, and Section 35 shall be effective for tax years beginning on and after January 1, 2010. Sections 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, subdivision (14)(A) of Section 12, Sections 13, 14, 15, subdivisions (a)(1)(A) and (a)(2) of Section 16, Sections 18, 19, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, and 34 shall be effective for tax years beginning on and after January 1, 2011."

## RESEARCH REFERENCES

**Am. Jur.** 71 Am. Jur. 2d, State Tax., § 518 et seq.

**Ark. L. Rev.** Taxation — Limits of State Income Taxation upon Nonresidents, 3 Ark. L. Rev. 480.

Tax Problems of the Personal Representative, 16 Ark. L. Rev. 364.

**U. Ark. Little Rock L.J.** Survey of Arkansas Law, Taxation, 1 U. Ark. Little Rock L.J. 258.

Legislative Survey, Taxation, 8 U. Ark. Little Rock L.J. 601.

### 26-51-401. Tax year — Accounting method.

(a) A taxpayer must calculate his or her Arkansas income tax liability using the same accounting method for Arkansas income tax purposes as used for federal income tax purposes.

(b) A taxpayer must provide to the Director of the Department of Finance and Administration a copy of any certification or approval from the federal Internal Revenue Service authorizing the taxpayer to change his or her accounting method.

**History.** Acts 1929, No. 118, Art. 3, § 9; Pope's Dig., § 14032; A.S.A. 1947, § 84-2012; Acts 1987, No. 382, § 12.

**Publisher's Notes.** Acts 1987, No. 382, § 1, provided that this act shall be known and may be cited as the "Income Tax Act of 1987."

Acts 1987, No. 382, § 2, provided that the purpose of this act is to make technical amendments to the Income Tax Act of 1929, Acts 1929, No. 118, as amended, and to the Arkansas Tax Procedure Act, Acts

1979, No. 401, as amended, to make the Arkansas income tax and tax procedure statutes conform to several recent amendments to their counterparts in the federal income statutes, to eliminate procedural problems that have arisen since the enactment of these acts, and for other purposes.

Acts 1987, No. 382, § 32(e), provided that all other laws and parts of laws in conflict with this act are repealed for income years beginning on and after January 1, 1987.

### CASE NOTES

#### Change of Method.

Taxpayer using accrual basis, except as to one item, who changed accounting method so as to report entirely on accrual basis could do so without first obtaining

permission when such change did not evade tax liability. *Cook v. Coca Cola Bottling Co.*, 210 Ark. 928, 198 S.W.2d 193 (1946).

### 26-51-402. Tax year — Basis for determining liability.

(a) A taxpayer must calculate his or her Arkansas income tax liability using the same income year for Arkansas income tax purposes as used for federal income tax purposes.

(b) A taxpayer must provide to the Director of the Department of Finance and Administration a copy of any certification or approval from the federal Internal Revenue Service authorizing the taxpayer to change his or her income year.

**History.** Acts 1929, No. 118, Art. 3, § 9; Pope's Dig., § 14032; A.S.A. 1947, § 84-2012; Acts 1987, No. 382, § 12.

**Publisher's Notes.** As to title, intent, and applicability of Acts 1987, No. 382, see Publisher's Notes, § 26-51-401.

### 26-51-403. Income generally.

(a) The term "net income" means the adjusted gross income of a taxpayer less the deductions allowed by the Income Tax Act of 1929, § 26-51-101 et seq.

(b) "Adjusted gross income" means, in the case of an individual, gross income minus the following deductions:



(1) Trade and business deductions otherwise allowable as deductions under this chapter that are attributable to a trade or business carried on by the taxpayer if the trade or business does not consist of the performance of services by the taxpayer as an employee;

(2) Trade and business deductions of employees otherwise allowable as deductions under this chapter;

(3) Deductions that consist of expenses paid or incurred by the taxpayer in connection with the performance by him or her of services as an employee under a reimbursement or other expense allowance arrangement with his or her employer;

(4) Losses from the sale or exchange of property;

(5) Deductions attributable to property held for the production of rents and royalties;

(6)(A) Certain deductions of life tenants and income beneficiaries of property.

(B) In the case of a life tenant of property, an income beneficiary of property held in trust, or an heir, legatee, or devisee of an estate, the deduction for depreciation allowed by 26 U.S.C. § 167, as provided in § 26-51-428, and the deduction allowed by 26 U.S.C. § 611, as provided in § 26-51-429;

(7) Deductions for certain portions of lump-sum distributions from pension plans taxed under 26 U.S.C. § 402(e), as set forth in § 26-51-414;

(8) Deductions for moving expenses, as set forth in § 26-51-423(a)(4);

(9) Deductions for alimony payments;

(10) Deductions for separate maintenance payments;

(11) Deductions for interest forfeited to a bank, savings association, et cetera., on premature withdrawals from time savings accounts or deposits;

(12) Deductions allowed for cash payments to individual retirement accounts and deductions allowed for cash payments to retirement savings plans of certain married individuals to cover a nonworking spouse;

(13) Deductions for contributions by self-employed persons to pension, profit-sharing, and annuity plans;

(14) The border city exemption as provided by § 26-52-601 et seq.;

(15) Deductions for the health insurance costs of self-employed persons as computed in accordance with § 26-51-423(c);

(16) Deductions for contributions to a long-term intergenerational trust created pursuant to the Long-Term Intergenerational Security Act of 1995, § 28-72-501 et seq.; and

(17) Deductions for contributions to the Arkansas Tax-Deferred Tuition Savings Program not to exceed five thousand dollars (\$5,000) per taxpayer under § 6-84-111(b).

(c)(1) The net income shall be computed upon the basis of the taxpayer's annual accounting period, either fiscal or calendar year, in accordance with the method of accounting regularly employed in keeping the books of the taxpayer.

(2) If no such method of accounting has been employed or if the method employed does not clearly reflect the income, the computation shall be made upon such basis and in such manner as in the opinion of the Director of the Department of Finance and Administration does clearly reflect the income.

(3) If the taxpayer's annual accounting period is other than a fiscal year as defined by the Income Tax Act of 1929 or he or she has no annual accounting period, or does not keep books, the net income shall be computed upon the basis of the calendar year.

**History.** Acts 1929, No. 118, Art. 3, § 7; Pope's Dig., § 14030; Acts 1969, No. 236, § 2; 1973, No. 182, § 4; A.S.A. 1947, § 84-2007; Acts 1987, No. 382, §§ 5, 6; 1989, No. 826, § 17; 1991, No. 685, § 1; 1993, No. 785, § 19; 1995, No. 1160, § 7; 1997, No. 1345, § 1; 2005, No. 1973, § 2.

**Publisher's Notes.** As to title, intent, and applicability of Acts 1987, No. 382, see Publisher's Notes, § 26-51-401.

Acts 1989, No. 826, § 1, provided that this act shall be known and may be cited as the "Arkansas Income Tax Technical Revenue Act of 1989."

Acts 1997, No. 1345 became law without the Governor's signature.

**Meaning of "Income Tax Act of 1929".** See note to § 26-51-101.

**Cross References.** Tax-Deferred Tuition Savings Program, § 6-84-101 et seq.

## RESEARCH REFERENCES

**Ark. L. Notes.** Beard, Transfers of Property between Spouses and Former Spouses — An Overview of Income Tax

Issues and a Suggested Analytical Approach to Such Issues, 1990 Ark. L. Notes 1.

## CASE NOTES

### ANALYSIS

Accounting Methods.  
Received.

### Accounting Methods.

Where agreement between state and taxpayer as to formula for determining what portion of gross income should be attributable to sources within the state in the case of income derived partly from sources within and partly from sources outside the state is held unenforceable, and the taxpayer's method of accounting does not clearly reflect the income, the computation may be made upon such basis and in such manner as in the opinion of the state does clearly reflect the income.

General Box Co. v. Scurlock, 224 Ark. 266, 272 S.W.2d 678 (1954).

### Received.

For the purpose of computing net income, "received" means either received or accrued, depending on whether the taxpayer is on a cash basis or an accrual basis. *F & M Bank v. Skelton*, 266 Ark. 680, 587 S.W.2d 561 (1979).

Since in 1973 when Arkansas began to tax the income of banks, bank's books need to show the interest now being taxed as having been "received" in those years. *F & M Bank v. Skelton*, 266 Ark. 680, 587 S.W.2d 561 (1979).

**Cited:** *Cook v. Walters Dry Goods Co.*, 212 Ark. 485, 206 S.W.2d 742 (1947).

## 26-51-404. Gross income generally.

(a)(1) "Gross income" includes:

(A) Gains, profits, and income derived from salaries, wages, or compensation for personal service of whatever kind and in whatever form paid;

(B) Gains, profits, and income derived from professions, vocations, trades, business, commerce, or sales;

(C) Gains, profits, and income derived from dealings in property, whether real or personal, growing out of the ownership of, use of, or interest in the property;

(D) Gains, profits, and income derived from interest, rent, royalties, dividends, annuities, securities, or the transaction of any business carried on for gain or profit;

(E) Gains or profits and income derived from any source whatever; and

(F) Any payments of alimony and separate maintenance received pursuant to a court order.

(2) The amount of all such items shall be included in the gross income of the taxable year in which received by the taxpayer.

(3) Any recovery of an amount which was deducted from gross income in a prior year must be treated as taxable income in the year recovered to the extent that the deduction resulted in a reduction in income tax liability.

(4) Title 26 U.S.C. § 117, as in effect on January 1, 2011, regarding the taxability of scholarships, fellowships, grants, and stipends, is adopted for the purpose of clarifying and calculating Arkansas income tax liability.

(b) "Gross income" does not include the following items, which shall be exempt from taxation under the Income Tax Act of 1929, § 26-51-101 et seq.:

(1) Title 26 U.S.C. § 1033, as in effect on January 1, 2009, relating to the exclusion from gross income of gain resulting from the involuntary conversion of a taxpayer's property, is adopted for the purpose of computing Arkansas income tax liability;

(2) Title 26 U.S.C. § 121, as in effect on January 1, 2009, relating to the exclusion from gross income of gain from the sale or exchange of property owned and used as the taxpayer's principal residence, is adopted for the purpose of computing Arkansas income tax liability;

(3) Title 26 U.S.C. § 101, as in effect on January 1, 2007, relating to the exclusion from gross income of proceeds or benefits paid upon the illness or death of the insured, is hereby adopted for the purpose of computing Arkansas income tax liability;

(4) The value of property acquired by gift, bequest, devise, or descent, but the income from such property shall be included in gross income;

(5) Interest upon obligations of the United States or its possessions or upon obligations of the State of Arkansas or any political subdivision of the State of Arkansas;

(6) Any:

(A) Amounts received through accident or health insurance or under workers' compensation acts as compensation for personal injuries or sickness, plus the amount of any damages received, whether by suit or agreement, on account of such injuries or sickness; or



(B) Social security payments, railroad retirement benefits, unemployment compensation benefits paid from federal unemployment trust funds, unemployment insurance benefits received from the railroad retirement boards, and unemployment compensation paid under Title IV of the Social Security Act, 42 U.S.C. § 601 et seq.;

(7)(A) Income from domestic corporations when earned from sources without the state, and these sources shall be defined to mean places of manufacture or production and places of merchandising.

(B) When books of account do not clearly and accurately reflect the income earned from sources without the state, the Arkansas income shall be determined by processes or formulas of general apportionment prescribed by the Director of the Department of Finance and Administration and approved by the Governor;

(8) Dividends received by a corporation doing business within this state from a subsidiary if at least eighty percent (80%) of the subsidiary's capital stock is owned by a corporation doing business within this state;

(9) In the case of an ordained, commissioned, or licensed minister of a recognized church:

(A) The rental value of a home furnished to him or her; or

(B) The rental allowance paid to him or her, to the extent that the allowance is used by the minister to rent or to provide a home;

(10) Title 26 U.S.C. §§ 108 and 1017, as in effect on January 1, 2011, regarding income from the discharge of indebtedness, are adopted for the purpose of computing Arkansas income tax liability;

(11) Title 26 U.S.C. § 125, in effect on January 1, 2011, is adopted in computing amounts excludible from gross income under the Income Tax Act of 1929, § 26-51-101 et seq., for payments received under a cafeteria plan;

(12)(A) Title 26 U.S.C. § 129, as in effect on January 1, 2005, regarding the exclusion from income for dependent care assistance, is adopted for the purpose of computing Arkansas income tax liability.

(B) However, no amounts excluded from gross income pursuant to subdivision (b)(12)(A) of this section shall be taken into account in computing the dependent care credit contained in § 26-51-502;

(13) Title 26 U.S.C. § 79, as in effect on January 1, 1989, regarding the exclusion from income for group term life insurance is hereby adopted for the purpose of computing Arkansas income tax liability;

(14) The following sections of the Internal Revenue Code, 26 U.S.C. § 1 et seq., regarding the exclusion from income of disability and health plan payments, are adopted for the purpose of computing Arkansas income tax liability:

(A) Title 26 U.S.C. §§ 104 and 106, as in effect on January 1, 2011; and

(B) Title 26 U.S.C. § 105, as in effect on March 30, 2010;

(15) Title 26 U.S.C. § 82, as in effect on January 1, 1995, regarding the inclusion in gross income of moving expense reimbursements, is adopted for the purpose of computing Arkansas income tax liability;

(16) Title 26 U.S.C. § 119, as in effect on January 1, 1999, regarding the exclusion from gross income of meals or lodging furnished for the convenience of the employer, is adopted for the purpose of computing Arkansas income tax liability;

(17) Title 26 U.S.C. § 126, as in effect on January 1, 1995, regarding the exclusion from gross income of certain cost-sharing payments, is adopted for the purpose of computing Arkansas income tax liability;

(18) Title 26 U.S.C. § 131, as in effect on January 1, 2003, regarding the exclusion from gross income of amounts received by a foster care provider as qualified foster care payments, is adopted for the purpose of computing Arkansas income tax liability;

(19) Title 26 U.S.C. § 132, as in effect on January 1, 2009, regarding the exclusion from income of certain fringe benefits, is adopted for the purpose of computing Arkansas income tax liability;

(20) Title 26 U.S.C. § 127, as in effect on January 1, 2011, regarding the exclusion from gross income for employees whose education expenses were paid by an employer, is adopted for the purpose of computing Arkansas income tax liability;

(21) Interest or dividends earned or capital gains recognized on a long-term intergenerational security trust created pursuant to this subchapter, except as provided in this subchapter;

(22) Interest or dividends earned on an individual development account and matching funds deposited in an individual development account pursuant to the Family Savings Initiative Act, § 20-86-101 et seq.;

(23) Title 26 U.S.C. § 138, as in effect on January 1, 1999, regarding a pilot program permitting eligible senior citizens to establish Medicare Plus Choice medical savings accounts, is adopted for the purpose of computing Arkansas income tax liability;

(24)(A) Title 26 U.S.C. § 72, as in effect on January 1, 2007, relating to the exclusion from gross income of certain proceeds received under life insurance, endowment, and annuity contracts, is adopted for the purpose of computing Arkansas income tax liability.

(B)(i) Annuity income received through an employment-related retirement plan shall not be subject to the provisions of this subsection.

(ii) The income shall instead be subject to the retirement income provisions of § 26-51-307;

(25) Title 26 U.S.C. § 137, as in effect on January 1, 2011, regarding the exclusion from gross income of benefits received under an employer's adoption assistance program, is adopted for the purpose of computing Arkansas income tax liability;

(26) Contributions by an employer to an employee's health savings account within the limitations established in § 26-51-453 shall not be included in the employee's gross income;

(27) Title 26 U.S.C. § 134, as in effect on January 1, 2009, regarding the exclusion from income of qualified military benefits provided to members of the United States military, is adopted for the purpose of computing Arkansas income tax liability; and

(28) Title 26 U.S.C. § 408(d)(8) as in effect on January 1, 2007, relating to tax-free distributions from individual retirement plans for charitable purposes for taxable years 2006 and 2007, is adopted for the purpose of computing Arkansas income tax liability.

**History.** Acts 1929, No. 118, Art. 3, § 8; Pope's Dig., § 14031; Acts 1939, No. 324, § 1; 1941, No. 129, § 6; 1953, No. 230, § 1; 1957, No. 144, §§ 1, 2; 1965, No. 570, § 1; 1967, No. 222, § 1; 1969, No. 462, § 1; 1971, No. 226, § 2; 1975, No. 683, § 1; 1977, No. 898, § 2; 1981, No. 817, § 1; 1981, No. 914, § 3; 1983, No. 379, §§ 3, 6; 1985, No. 486, § 5; A.S.A. 1947, § 84-2008; Acts 1987, No. 382, §§ 4, 7-11, 32; 1987 (1st Ex. Sess.), No. 48, § 1; 1989, No. 826, §§ 9, 10, 18-21; 1995, No. 560, § 1; 1995, No. 732, § 1; 1995, No. 1160, §§ 8, 10, 11; 1995, No. 1303, § 4; 1997, No. 328, § 7; 1997, No. 951, §§ 3-5, 6, 22, 23; 1997, No. 1189, § 1; 1999, No. 1126, §§ 16-23; 1999, No. 1217, § 10; 2001, No. 773, § 3; 2003, No. 663, §§ 2-6; 2005, No. 94, §§ 2, 3; 2005, No. 189, § 2; 2005, No. 675, §§ 2-5; 2007, No. 196, § 1; 2007, No. 218, §§ 16, 17; 2009, No. 372, §§ 4-9; 2011, No. 787, §§ 9-14.

**A.C.R.C. Notes.** Acts 1981, No. 914, § 2, provided: "The purpose of this act is to make technical amendments to the Arkansas Tax Procedure Act, Acts 1979, No. 401, and to certain Arkansas income tax statutes to eliminate the procedural problems that have arisen since the enactment of Acts 1979, No. 401, and to make the Arkansas income tax statutes conform to several recent amendments to their counterparts in the federal income tax statutes." The act became effective for all periods after December 31, 1980.

Acts 1983, No. 379, § 2, provided: "The purpose of this act is to make technical amendments to the Income Tax Act of 1929, Acts 1929, No. 118, as amended, to the Estate Tax Law of Arkansas, Acts 1941, No. 136, as amended, and to the Arkansas Tax Procedure Act, Acts 1979, No. 401, as amended, to eliminate the procedural problems that have arisen since the enactment of these acts and to make the Arkansas income and estate tax statutes conform to several recent amendments to their counterparts in the federal income and estate tax statutes, and for other purposes." The act was effective for all income years after, or estate tax return

filing dates coming after, December 31, 1982.

As amended by Acts 1995, No. 560, § 1, subdivision (b)(21) began: "Effective for taxable years beginning on or after January 1, 1995."

As amended by Acts 1995, No. 1303, § 4, subdivision (b)(22) began: "'Gross income,' as defined in § 26-51-401, shall not include."

Acts 1997, No. 1189, § 3, provided: "It is determined by the General Assembly that Arkansas income tax laws concerning the taxability of dividends received from a subsidiary are at variance with corresponding federal income tax laws, although the existence or non-existence of any such variance with respect to corporations filing an Arkansas consolidated tax return is subject to existing disputes. It is further determined that state income tax laws should have been the same as federal income tax laws and this Act is adopted to clarify that these dividends are to be treated for state income tax purposes in the same manner they would be treated for federal income tax purposes for all corporations to which the Act is applicable. It is further found that there are pending cases and controversies involving the taxability of dividends from subsidiaries for state income tax purposes and that this Act is not intended to affect any existing cases or controversies this issue or to have any effect upon the interpretation of prior law."

Acts 2005, No. 189, § 1, provided: "The purpose of this act is to clarify current law regarding cost recovery for annuitants under the Income Tax Act of 1929, Arkansas Code § 26-51-101 et seq."

Pursuant to its own terms, subdivision (b)(28) of this section is only effective for tax years 2006 and 2007.

**Publisher's Notes.** As to title, intent, and applicability of Acts 1987, No. 382, see Publisher's Notes, § 26-51-401.

As to the short title of Acts 1989, No. 826, see Publisher's Notes, § 26-51-403.

**Amendments.** The 2009 amendment, in (b), substituted "2009" for "2007" in (b)(1) and (b)(2), for "1999" in (b)(10), for



"1997" in (b)(11), for "2003" in (b)(19), and for "2005" in (b)(27), and substituted "qualified military benefits" for "child care benefits" in (b)(27).

The 2011 amendment substituted "January 1, 2011" for "January 1, 2003" in

(a)(4), (b)(20), and (b)(25); substituted "January 1, 2011" for "January 1, 2009" in (b)(10) and (b)(11); and rewrote (b)(14).

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tive Survey, Taxation, 4 U. Ark. Little Rock L.J. 609.

Legislation of the 1983 General Assembly, Taxation, 6 U. Ark. Little Rock L.J. 636.

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## CASE NOTES

### ANALYSIS

Constitutionality.  
Construction.  
Dividends.  
Gifts.

### Constitutionality.

Acts 1931, No. 220, relieving domestic corporations doing business entirely outside the state of Arkansas from the payment of any income tax to the state, when read in connection with the General Income Tax Act of 1929, which imposes an income tax upon a domestic corporation doing business both within and without the state on income derived from sources outside Arkansas, denied to such domestic corporation the equal protection of the laws and amounted to the taking of its property without due process. *Cheney v. Stephens, Inc.*, 231 Ark. 541, 330 S.W.2d 949 (1960).

Since court could reasonably conceive of lawful purposes for state's classification scheme in providing tax exemptions for retirement income of government employees, such scheme could not be held to have been arbitrarily enacted; therefore, since state's classification confers a benefit upon public employees that is available to all workers of this calling and class throughout Arkansas, Ark. Const., Art. 2,

§ 18, and U.S. Const. Amend. 14 are not violated. *Streight v. Ragland*, 280 Ark. 206, 655 S.W.2d 459 (1983).

Tax legislation exempting retirement income of government employees is not special legislation, for it is not arbitrary; tax exemption acts are not special acts as that term has been defined, since it is not enough that the state has separated some class from the operation of a law, rather, the separation must be arbitrary. *Streight v. Ragland*, 280 Ark. 206, 655 S.W.2d 459 (1983).

Emergency Income Tax Rule, which was enacted by the Arkansas Department of Finance and Administration in response to the declaration that § 26-51-307(c) was unconstitutional, was also unconstitutional because it was clear that the General Assembly never intended I.R.C. § 72 be applied to recover of after-tax contribution in employment-related retirement plans. *Weiss v. Maples*, 369 Ark. 282, 253 S.W.3d 907 (2007).

### Construction.

Section § 26-51-307(c) clearly provides that cost of contributions to a retirement plan may not be deducted in computing income for State tax purposes, and subdivision (b)(24)(B) of this section provides that annuity income from retirement plans is subject to § 26-51-307 rather than subsection (b) of this section; a re-

tirement plan could contain pre-tax contributions upon which no income tax has ever been paid, employer contributions upon which no income tax has ever been paid, after-tax contributions upon which income tax has been paid, and the gain from pre-tax contributions and after-tax contributions upon which no income tax has ever been paid, and the above quoted statutes speak to income. *Weiss v. McFadden*, 353 Ark. 868, 120 S.W.3d 545 (2003).

#### **Dividends.**

Stock dividends received by domestic corporation from foreign corporation not doing business in state held properly charged in the domestic corporation's income tax. *Temple v. Gates*, 186 Ark. 820, 56 S.W.2d 417 (1933).

Parent company was required to add back to its gross income nontaxable dividend income from its subsidiary for the restricted purpose of computing the net

operating loss to be carried forward. *Kansas City S. Ry. v. Pledger*, 301 Ark. 564, 785 S.W.2d 462 (1990).

#### **Gifts.**

Where husband sold land and wife relinquished her dower, with the wife receiving one-third the purchase price, the one-third amount was taxable income on the part of the husband, since the wife's interest in the land was inchoate and not one that she could convey, and the payment to the wife amounted to no more than a gift of part of the purchase price by the husband. *Le Croy v. Cook*, 211 Ark. 966, 204 S.W.2d 173, 1 A.L.R.2d 1032 (1947).

**Cited:** *Wiseman v. Interstate Pub. Serv. Co.*, 191 Ark. 255, 85 S.W.2d 700 (1935); *Cheney v. Stephens, Inc.*, 231 Ark. 541, 330 S.W.2d 949 (1960); *St. Louis S.W. Ry. v. Ragland*, 304 Ark. 1, 800 S.W.2d 410 (1990); *Weiss v. McFadden*, 356 Ark. 123, 148 S.W.3d 248 (2004).

### **26-51-405. Partnership income.**

(a) An individual carrying on business as a partner in a partnership shall be liable for income tax only in his or her individual capacity and shall include in his or her gross income the distributive share of the net income or net loss of the partnership received by him or her or distributable to him or her during the income year.

(b) The partner shall report all deductions or credits distributable to him or her personally as a partner in the partnership.

(c) A partner's distributive share of partnership loss shall be allowed only to the extent of the adjusted basis of the partner's interest in the partnership at the end of the partnership year in which the loss occurred.

(d) Any excess of the loss over the basis shall be allowed as a deduction at the end of the partnership year in which the excess is repaid to the partnership.

**History.** Acts 1929, No. 118, Art. 3, § 9; Pope's Dig., § 14032; A.S.A. 1947, § 84-2012; Acts 1987, No. 382, § 12.

**Publisher's Notes.** As to title, intent, and applicability of Acts 1987, No. 382, see Publisher's Notes, § 26-51-401.

### **RESEARCH REFERENCES**

**ALR.** State income tax treatment of partnerships and partners. 2 A.L.R.6th 1.

### **26-51-406. Income to beneficiaries of trusts and estates.**

(a) Every individual, taxable under the Income Tax Act of 1929, who is a beneficiary of an estate or trust shall include in his or her gross

income the distributive share of the income or loss of the estate or trust received by him or her or distributable to him or her during the income year.

(b) Unless otherwise provided in the law or the will, the deed, or other instrument creating the estate, trust, or fiduciary relationship, the net income shall be deemed to be distributed or distributable to the beneficiaries, including the fiduciary as a beneficiary, in the case of income accumulated for future distribution, ratably in proportion to their respective interests.

(c) Any excess losses accumulated by the estate or trust at the time of the termination of the estate or trust shall be distributable to the beneficiaries ratably and claimed by the beneficiaries on the individual Arkansas income tax returns as otherwise provided by the Income Tax Act of 1929.

**History.** Acts 1929, No. 118, Art. 3, § 9; and applicability of Acts 1987, No. 382, see Pope's Dig., § 14032; A.S.A. 1947, § 84-2012; Acts 1987, No. 382, § 12. Publisher's Notes, § 26-51-401.

**Publisher's Notes.** As to title, intent, **Meaning of "Income Tax Act of 1929".** See note to § 26-51-101.

## 26-51-407. Financial institutions.

(a) A financial institution having its principal office in this state shall be taxed as a business corporation organized and existing under the laws of this state.

(b)(1) A financial institution having its principal office outside this state but doing business in this state shall be taxed as a foreign business corporation doing business in this state.

(2) However, this subsection is not intended to recognize the right of a foreign financial institution to conduct any business activities in this state except to the extent and under the conditions permitted by Acts 1953, No. 559, §§ 1-8 [unconstitutional] and any other applicable laws of this state.

**History.** Acts 1973, No. 182, § 3; A.S.A. 1947, § 84-2086; Acts 1995, No. 495, § 3

**A.C.R.C. Notes.** Acts 1953, No. 559, referred to in subdivision (b)(2) of this section, was held unconstitutional in Pioneer Finance Co. v. Murchison, 257 Ark. 1052 (1975).

**Publisher's Notes.** For definitions ap-

plicable to, and legislative intent concerning, this section, see §§ 26-26-1502 and 26-50-101.

For present law regarding the net taxable income of savings and loan associations and building and loan associations, see § 26-51-1401 et seq.

## 26-51-408. Dividends of financial institutions taxable.

Dividends paid on shares of stock of financial institutions shall be subject to income tax under the Income Tax Act of 1929, § 26-51-101 et seq., on the same basis as dividends on shares of stock of business corporations.

**History.** Acts 1973, No. 182, § 4; A.S.A. 1947, § 84-2008.2.

**Publisher's Notes.** For definitions applicable to, and legislative intent concern-



ing, this section, see §§ 26-26-1502 and 26-50-101.

### RESEARCH REFERENCES

**ALR.** State corporate income taxation of foreign dividends. 17 A.L.R.6th 623.

#### **26-51-409. Federal Subchapter S adopted.**

(a) Subchapter S of the Internal Revenue Code, 26 U.S.C. § 1361 et seq., as in effect on January 1, 2011, regarding small business corporations, is adopted for the purpose of computing Arkansas income tax liability.

(b)(1) The corporate election and shareholder consents required to be filed under Subchapter S of the Internal Revenue Code, 26 U.S.C. § 1361 et seq., for Arkansas income tax purposes shall be filed with the Director of the Department of Finance and Administration in the same manner and at the same time as required under Subchapter S of the Internal Revenue Code, 26 U.S.C. § 1361 et seq., on forms to be prescribed by the director.

(2) A corporation may elect Subchapter S treatment for Arkansas income tax purposes only if it has elected Subchapter S treatment for federal income tax purposes for the same tax year.

(3) When filing an Arkansas Subchapter S income tax return, a corporation shall attach to its Arkansas Subchapter S income tax return a complete copy of the corporation's federal Subchapter S income tax return filed with the federal Internal Revenue Service for that taxable year.

(c)(1) However, all nonresident shareholders of S corporations receiving a prorated share of income, loss, deduction, or credit pursuant to the provisions of this section must file a properly executed state income tax return with the director and remit the applicable state income tax due.

(2) Failure to so report and remit on the part of any nonresident shareholder shall be grounds upon which the director may revoke the corporation's Subchapter S election and collect the tax from the corporation by any manner authorized by the Income Tax Act of 1929, § 26-51-101 et seq.

**History.** Acts 1979, No. 414, § 1; 1983, No. 51, §§ 1, 3; A.S.A. 1947, § 84-2004.1; Acts 1987, No. 382, § 3; 1989, No. 826, § 22; 1991, No. 685, § 2; 1993, No. 785, § 7; 1997, No. 951, § 17; 1999, No. 1126, § 24; 2003, No. 663, § 7; 2005, No. 261, § 1; 2005, No. 675, § 6; 2007, No. 218, § 18; 2007, No. 380, § 1; 2009, No. 372, § 10; 2011, No. 787, § 15.

**Publisher's Notes.** As to title, intent,

and applicability of Acts 1987, No. 382, see Publisher's Notes, § 26-51-401.

As to the short title of Acts 1989, No. 826, see Publisher's Notes, § 26-51-403.

**Amendments.** The 2009 amendment substituted "2009" for "2007" in (a).

The 2011 amendment substituted "January 1, 2011" for "January 1, 2009" in (a).

## RESEARCH REFERENCES

**U. Ark. Little Rock L. Rev.** Tyler, Survey of Business Law, 3 U. Ark. Little Rock L.J. 149.

Legislation of the 1983 General Assembly, Taxation, 6 U. Ark. Little Rock L.J. 636.

Survey of Legislation, 2003 Arkansas General Assembly, Education Law, Income Tax Computation, 26 U. Ark. Little Rock L. Rev. 381.

**26-51-410. Inventory.**

Whenever, in the opinion of the Director of the Department of Finance and Administration, the use of inventories is necessary in order to clearly determine the income of any taxpayer, inventories shall be taken by the taxpayer, upon such basis as the director may prescribe, conforming as nearly as may be possible to the best accounting practice in the trade or business and most clearly reflecting the income.

**History.** Acts 1929, No. 118, Art. 3, § 12; Pope's Dig., § 14035; A.S.A. 1947, § 84-2015.

**26-51-411. Gain or loss — Sales of property.**

(a) For the purpose of ascertaining the gain or loss from the sale or other disposition of real, personal, or mixed property, the basis shall be, in the case of property acquired before January 1, 1928, the assessed valuation of such property on the county tax books as of that date if such assessed valuation exceeds the original cost and, in all other cases, the cost of such property, except that:

(1) In the case of such property which should be included in the inventory, the basis shall be the last inventory value;

(2)(A) In the case of property acquired by gift after March 9, 1929, the basis shall be the same as that which it would have been in the hands of the donor or the last preceding owner by whom it was not acquired by gift.

(B) If the facts necessary to determine such basis are unknown to the donee, the Director of the Department of Finance and Administration shall use the assessed valuation of the property;

(3) In the case of such property acquired by gift on or before March 9, 1929, the basis for ascertaining gain or loss from sale or other disposition of such property shall be the assessed valuation; and

(4) In the case of such property acquired by bequest, devise, or inheritance, the basis shall be the appraised value of such property upon which state inheritance tax or estate tax was paid.

(b) The basis for ascertaining the gain derived or loss sustained from the sale or other disposition of real, personal, or mixed property acquired before January 1, 1928, shall be the assessed value of such property including improvements as of January 1, 1928, or the actual cost of such property, but:

(1) If its assessed valuation as of January 1, 1928, is in excess of its sale price at the time of disposition, then the deductible loss shall be the difference between the assessed valuation on January 1, 1928, and the amount realized from the sale less depreciation or depletion subsequently sustained;

(2) If the assessed valuation as of January 1, 1928, is less than the sale price, then the taxable gain shall be the excess realized over the assessed valuation plus depreciation or depletion subsequently sustained; and

(3) If the amount realized is more than the cost price but not more than its assessed valuation as of January 1, 1928, or less than the cost but not less than its assessed valuation on January 1, 1928, then no gain shall be included in and no loss deducted from the gross income.

(c) For the purpose of the Income Tax Act of 1929, on any exchange of real, personal, or mixed property for any other like property of similar value no gain or loss shall be recognized.

(d)(1) In computing gain or loss from the sale of property, the difference between the amount realized and the adjusted basis is the amount of the gain or loss.

(2) The adjusted basis of the property is its cost, increased for capital charges and decreased for depreciation and for depletion.

(3) The amount realized from a sale or other disposition of property is the sum of any money received plus the fair market value of property or services received, less expenses.

(e) Title 26 U.S.C. §§ 453, 453A, and 453B, as in effect on January 1, 2005, are adopted concerning the installment method of accounting.

(f) Title 26 U.S.C. § 1045, as in effect on January 1, 1999, regarding gain on the sale or exchange of qualified small business stock, is adopted for the purpose of computing Arkansas income tax liability.

(g) Title 26 U.S.C. §§ 1258 and 1259, as in effect on January 1, 1999, regarding appreciated financial positions, are adopted for the purpose of computing Arkansas income tax liability.

(h) Title 26 U.S.C. § 267, as in effect on January 1, 2001, regarding losses, expenses, and interest arising from transactions between related taxpayers, is adopted for the purpose of computing Arkansas income tax liability.

**History.** Acts 1929, No. 118, Art. 3, § 10; Pope's Dig., § 14033; Acts 1969, No. 236, § 4; A.S.A. 1947, § 84-2013; Acts 1995, No. 1160, § 12; 1999, No. 1126, § 25; 2001, No. 773, § 4; 2005, No. 675, § 7; 2007, No. 827, § 216.

**Publisher's Notes.** As to applicability of 1969 amendment, see Publisher's Notes to § 26-51-403.

**Meaning of "Income Tax Act of 1929".** See note to § 26-51-101.

## RESEARCH REFERENCES

**U. Ark. Little Rock L. Rev.** Survey of Legislation, 2001 Arkansas General Assembly, Tax Law, 24 U. Ark. Little Rock L. Rev. 613.



## 26-51-412. Gain or loss — Exchange of property.

(a)(1) For the purpose of determining gain or loss, when property is exchanged for other property the property received in exchange shall be treated as the equivalent of cash to the amount of its fair market value if a market exists in which all the property so received can be disposed of at the time of exchange for a reasonable, certain, and definite price in cash.

(2) Otherwise, such exchange shall be considered as a conversion of assets from one (1) form to another, from which no gain or loss shall be deemed to arise.

(b) In the case of the organization of a corporation, the stock received shall be considered to take the place of property transferred for the stock, and no gain or loss shall be deemed to arise from the stock received.

(c) When, in connection with the reorganization, merger, or consolidation of a corporation, a taxpayer receives, in place of stock or securities owned by him or her, new stock or securities, then the basis of computing the gain or loss, if there is any, in a case where the stock or securities owned were acquired before January 1, 1928, shall be the fair market price or value thereof as of that date if such price or value exceeds the original cost, and in all other cases the cost thereof, under regulations to be promulgated by the Director of the Department of Finance and Administration.

(d) Title 26 U.S.C. §§ 351, 354-358, 361, 362, 367, and 368, as in effect on January 1, 2009, regarding corporate organization, reorganization, and recognition of gain, are adopted for the purpose of computing Arkansas income tax liability.

**History.** Acts 1929, No. 118, Art. 3, § 11; Pope's Dig., § 14034; A.S.A. 1947, § 84-2014; Acts 1991, No. 687, § 1; 1999, No. 1126, § 26; 2001, No. 773, § 5; 2007, No. 218, § 19; 2009, No. 372, § 11.

**Amendments.** The 2009 amendment substituted "2009" for "2007" in (d).

## RESEARCH REFERENCES

**U. Ark. Little Rock L. Rev.** Survey of Assembly, Tax Law, 24 U. Ark. Little Rock L. Legislation, 2001 Arkansas General As- Rev. 613.

## 26-51-413. Corporate liquidations.

(a) Title 26 U.S.C. §§ 332, 334, 336, 337, and 338, as in effect on January 1, 2007, regarding the liquidations of corporations, are adopted for the purpose of computing Arkansas income tax liability.

(b) However, a corporation that has made an election under Subchapter S of the Internal Revenue Code, 26 U.S.C. § 1361 et seq., and that has not made a corresponding election to be treated as an S Corporation for Arkansas income tax purposes pursuant to § 26-51-409(b), will not be deemed to have made elections under 26 U.S.C. § 338 for Arkansas income tax purposes, unless it has filed a separate

election with the Director of the Department of Finance and Administration stating that it is making an election under 26 U.S.C. § 338 for Arkansas income tax purposes.

(c) For the purposes of the application of this section, the transition rule of §§ 633(c) and (d) of the Tax Reform Act of 1986, Pub. L. No. 99-514, as amended by subsections (g)(2), (g)(3)(A)-(C), (g)(4), (g)(5)(A) and (B), and (g)(7) of § 1006 of the Technical and Miscellaneous Revenue Act of 1988, Pub. L. No. 100-647, shall also apply under the state income tax law.

**History.** Acts 1973, No. 174, § 1; A.S.A. 1947, § 84-2013.1; Acts 1987, No. 382, § 13; 1989, No. 826, § 23; 1997, No. 951, § 33; 1999, No. 1126, § 27; 2007, No. 218, § 20.

**Publisher's Notes.** As to title, intent, and applicability of Acts 1987, No. 382, see Publisher's Notes, § 26-51-401.

As to the short title of Acts 1989, No. 826, see Publisher's Notes, § 26-51-403.

**U.S. Code.** Sections 633(c) and (d) of the Tax Reform Act of 1986 referred to in this section appear as 26 U.S.C. § 336, note.

Section 1006(g)(2), (g)(3)(A)-(C), (g)(4), (g)(5)(A) and (B), and (g)(7) of the Technical and Miscellaneous Revenue Act of 1988 amend P.L. 100-647, Title I, § 1006(g), which is set out in a note following 26 USCS § 336.

## 26-51-414. Deferred compensation plans.

(a)(1) The following sections relating to annuities, retirement savings, and employee benefit plans are adopted for the purpose of computing Arkansas income tax liability, except Arkansas capital gains treatment and the Arkansas tax rates shall apply:

(A) Title 26 U.S.C. §§ 72, 219, 402-404, 406-416, and 457, as in effect on January 1, 2011; and

(B) Title 26 U.S.C. § 401, as in effect on March 30, 2010.

(2) The requirements for filing a joint return under 26 U.S.C. § 219(c)(1)(A) shall not apply.

(b) Title 26 U.S.C. § 408A as in effect on January 1, 2010, relating to Roth individual retirement accounts, is adopted for the purpose of computing Arkansas income tax liability, except with regard to adjusted gross income under 26 U.S.C. § 408A(c)(3), which shall be determined in the same manner as under § 26-51-403(b).

(c) Any additional tax or penalty imposed by this section shall be ten percent (10%) of the amount of any additional tax or penalty provided in the federal income tax law adopted by this section.

(d) Title 26 U.S.C. § 1042, as in effect on January 1, 2003, regarding the deferral of gain realized on the sale of a corporation's shares of stock to the corporation's employee stock ownership plan (ESOP), is adopted for the purpose of computing Arkansas income tax liability.

**History.** Acts 1959, No. 202, § 2; 1983, No. 379, § 13; 1986 (2nd Ex. Sess.), No. 20, § 1; A.S.A. 1947, § 84-2049; Acts 1987, No. 382, § 27; 1987 (1st Ex. Sess.), No. 48, § 2; 1989, No. 826, § 24; 1991, No. 685, § 4; 1995, No. 1160, § 6; 1997, No. 951, § 2; 1999, No. 144, § 1; 1999, No.

513, § 1; 2003, No. 218, § 1; 2003, No. 663, § 8; 2005, No. 94, § 4; 2007, No. 218, § 21; 2009, No. 372, § 12; 2011, No. 787, §§ 16, 17.

**Publisher's Notes.** As to title, intent, and applicability of Acts 1987, No. 382, see Publisher's Notes, § 26-51-401.

As to the short title of Acts 1989, No. 826, see Publisher's Notes, § 26-51-403.

**Amendments.** The 2009 amendment substituted "2009" for "2007" in (a)(1).

The 2011 amendment rewrote (a) and (b).

### RESEARCH REFERENCES

**Ark. L. Notes.** Beard, Transfers of Property between Spouses and Former Spouses — An Overview of Income Tax Issues and a Suggested Analytical Approach to Such Issues, 1990 Ark. L. Notes 1.

**U. Ark. Little Rock L. Rev.** Legislation of the 1983 General Assembly, Taxation, 6 U. Ark. Little Rock L.J. 636.

Survey of Legislation, 2003 Arkansas General Assembly, Taxation, Internal Revenue Code Provisions, 26 U. Ark. Little Rock L. Rev. 495.

Survey of Legislation, 2003 Arkansas General Assembly, Education Law, Income Tax Computation, 26 U. Ark. Little Rock L. Rev. 381.

### 26-51-415. Deductions — Interest.

Title 26 U.S.C. § 163, as in effect on January 1, 2011, regarding deductions for interest expenses, is adopted for the purpose of computing Arkansas income tax liability.

**History.** Acts 1929, No. 118, Art. 3, § 13; Pope's Dig., § 14036; Acts 1957, No. 147, § 1; 1975, No. 972, § 1; 1977, No. 898, § 1; A.S.A. 1947, § 84-2016; Acts 1987, No. 382, § 15; 1989, No. 826, § 25; 1991, No. 686, § 1; 1995, No. 1160, § 3; 1997, No. 951, § 11; 1999, No. 1126, § 28; 2007, No. 218, § 22; 2009, No. 372, § 13; 2011, No. 787, § 18.

**Publisher's Notes.** As to title, intent, and applicability of Acts 1987, No. 382, see Publisher's Notes, § 26-51-401.

As to the short title of Acts 1989, No. 826, see Publisher's Notes, § 26-51-403.

**Amendments.** The 2009 amendment substituted "2009" for "2007."

The 2011 amendment substituted "January 1, 2011" for "January 1, 2009."

### RESEARCH REFERENCES

**Ark. L. Notes.** Beard, Transfers of Property between Spouses and Former Spouses — An Overview of Income Tax

Issues and a Suggested Analytical Approach to Such Issues, 1990 Ark. L. Notes 1.

### CASE NOTES

**Cited:** Wiseman v. Interstate Pub. Serv. Co., 191 Ark. 255, 85 S.W.2d 700 (1935).

### 26-51-416. Deductions — Taxes.

In computing net income, there shall be allowed as deductions taxes paid or accrued within the income year, imposed by the authority of the United States or any of its possessions or of any state, territory, or any political subdivision of any state or territory, or the District of Columbia, or of any foreign country, except estate, succession, or inheritance taxes or except income taxes imposed by the Income Tax Act of 1929, and taxes assessed for local benefits of a kind tending to increase the value of the property assessed for those benefits. However, the deduc-



tions allowed in this section for taxes shall not include any allowances or deductions for federal income taxes paid or accrued by the taxpayer within the income year which are imposed by the authority of the United States or any of its possessions; nor shall individuals be allowed an itemized deduction for general sales or use taxes imposed by the authority of any state or subdivision thereof, or for the cost of license plates or drivers' licenses, or for motor fuel or special motor fuel taxes.

**History.** Acts 1929, No. 118, Art. 3, § 13; Pope's Dig., § 14036; Acts 1947, No. 135, § 2; 1949, No. 234, § 1; 1957, No. 147, § 1; A.S.A. 1947, § 84-2016; Acts 1987, No. 382, § 16.

**Publisher's Notes.** As to title, intent, and applicability of Acts 1987, No. 382, see Publisher's Notes, § 26-51-401.

**Meaning of "Income Tax Act of 1929".** See note to § 26-51-101.

## CASE NOTES

### ANALYSIS

Constitutionality.  
In General.  
Applicability.  
Federal Taxes.

#### Constitutionality.

Amendment of 1949 providing for elimination of amount paid in federal taxes as a deduction under state gross income tax was not a violation of constitutional amendment prohibiting increase of tax rate, as elimination of deduction did not increase the rate, though amount of tax was increased for those paying federal income taxes. *Morley v. Remmel*, 215 Ark. 434, 221 S.W.2d 51 (1949).

#### In General.

Provision limiting deduction for federal taxes to 50% was not invalid, since the class of deductions are a matter for legis-

lative determination. *Cook v. Walters Dry Goods Co.*, 212 Ark. 485, 206 S.W.2d 742 (1947) (decision prior to 1949 amendment).

#### Applicability.

The 1947 amendment to this section did not apply to a fiscal year ending June 30, 1946. *Cook v. Arkansas State Rice Milling Co.*, 213 Ark. 396, 210 S.W.2d 511 (1948).

#### Federal Taxes.

Post-war refund paid by taxpayer to federal government under § 780 of the Internal Revenue Code of 1939 (repealed) was not allowable as a deductible item of taxes in computing gross income for state income tax purposes. *Henry H. Cross Co. v. Cook*, 208 Ark. 958, 188 S.W.2d 497 (1945).

**Cited:** *Wiseman v. Interstate Pub. Serv. Co.*, 191 Ark. 255, 85 S.W.2d 700 (1935).

## 26-51-417. Deductions — Alimony or separate maintenance.

(a) Title 26 U.S.C. § 71, in effect on January 1, 1987, is adopted for purposes of determining the amount of alimony or separate maintenance to include in the gross income of the recipient.

(b) Title 26 U.S.C. § 215, in effect on January 1, 1987, is adopted for purposes of determining the amount of alimony or separate maintenance that can be deducted from a taxpayer's income for any income year.

**History.** Acts 1929, No. 118, Art. 3, § 13; Pope's Dig., § 14036; Acts 1957, No. 147, § 1; 1983, No. 379, § 4; A.S.A. 1947, § 84-2016; Acts 1987, No. 382, § 20.

**Publisher's Notes.** As to title, intent, and applicability of Acts 1987, No. 382, see Publisher's Notes, § 26-51-401.

## RESEARCH REFERENCES

**Ark. L. Notes.** Beard, Transfers of Property between Spouses and Former Spouses — An Overview of Income Tax Issues and a Suggested Analytical Approach to Such Issues, 1990 Ark. L. Notes 1.

**U. Ark. Little Rock L.J.** Legislation of the 1983 General Assembly, Taxation, 6 U. Ark. Little Rock L.J. 636.

## CASE NOTES

**Cited:** Wiseman v. Interstate Pub. Serv. Co., 191 Ark. 255, 85 S.W.2d 700 (1935).

**26-51-418. Deductions — Disabled children.**

(a) In addition to any other state income tax deduction permitted by law, a taxpayer in this state who is maintaining, supporting, and caring for a totally and permanently disabled child in his or her home shall be permitted a deduction on his or her Arkansas income taxes of five hundred dollars (\$500) for each income year that the taxpayer maintains, supports, and cares for such totally and permanently disabled child.

(b) As used in this section:

(1) "Child" means a natural or adopted child of the taxpayer; and  
 (2)(A) "Totally and permanently disabled" means any child who is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than twelve (12) months.

(B) A physical or mental impairment is an impairment that results from anatomical, physiological, or psychological abnormalities which are demonstrable by medically acceptable clinical or laboratory diagnostic techniques.

(c) The Director of the Department of Finance and Administration may adopt appropriate rules and regulations to carry out the purpose and intent of this section and to prevent abuse of the deduction provided for in this section.

**History.** Acts 1991, No. 708, §§ 1, 2, 4; 1999, No. 417, § 2.

**Publisher's Notes.** Former § 26-51-418, concerning deductions for political

contributions, was repealed by Acts 1987, No. 382, § 32. The former section was derived from Acts 1967, No. 62, § 1; A.S.A. 1947, § 84-2016.5.

**26-51-419. Deductions — Charitable contributions.**

(a)(1)(A) Title 26 U.S.C. § 170, as in effect on January 1, 2011, regarding deductions for charitable contributions, is adopted for the purpose of computing Arkansas income tax liability.

(B) This adoption is for taxable years beginning on or after January 1, 2011, and does not have an effect on tax years before its adoption.

(2) However, with respect to contributions of qualified appreciated stock within the meaning of 26 U.S.C. § 170(e)(5) made after May 31, 1997, the provisions of this section shall apply after taking into account the extension of the provisions of 26 U.S.C. § 170(e)(5) by § 602 of the Taxpayer Relief Act of 1997, Pub. L. No. 105-34, and § 1004(a) of the Tax and Trade Relief Extension Act of 1998, Pub. L. No. 105-277.

(b) The provisions of subsection (a) of this section shall apply to a corporation that files an Arkansas consolidated corporation income tax return pursuant to § 26-51-805, provided that each member of the affiliated group shall follow the provisions of § 26-51-805(f) and calculate its contribution limits separately.

(c) For purposes of subsection (a) of this section, a cash contribution made in January 2005 for the relief of victims in areas affected by the December 26, 2004, Indian Ocean tsunami, for which a charitable contribution deduction is allowed under 26 U.S.C. § 170, may be treated as if the contribution were made on December 31, 2004, and not in January 2005.

**History.** Acts 1967, No. 25, § 2; 1983, No. 379, § 12; A.S.A. 1947, § 84-2016.3; Acts 1987, No. 382, § 22; 1989, No. 826, § 3; 1995, No. 1160, § 5; 1997, No. 951, § 13; 1999, No. 1126, § 29; 2001, No. 773, § 6; 2001, No. 1227, § 1; 2005, No. 53, § 1; 2005, No. 675, § 8; 2007, No. 218, § 23; 2009, No. 372, § 14; 2011, No. 787, § 19.

**A.C.R.C. Notes.** Acts 2001, No. 1227, § 2, provides: "This act is intended to reverse the Supreme Court of Arkansas decision in *Central & Southern Companies v. Weiss*, 339 Ark. 76 (1999), which provided that the excess charitable contributions of one member of a consolidated group could be used to offset the taxable income of other members of the consolidated group."

**Publisher's Notes.** As to title, intent,

and applicability of Acts 1987, No. 382, see Publisher's Notes, § 26-51-401.

As to the short title of Acts 1989, No. 826, see Publisher's Notes, § 26-51-403.

**Amendments.** The 2009 amendment substituted "2009" for "2007" in (a)(1)(A) and (a)(1)(B), and made a minor stylistic change.

The 2011 amendment substituted "January 1, 2011" for "January 1, 2009" in (a)(1)(A) and (a)(1)(B).

**U.S. Code.** The Tax and Trade Relief Extension Act of 1998, referred to in (c), is codified as 26 U.S.C. § 1 nt.

The Taxpayer Relief Act of 1997, referred to in (a), is codified as 26 U.S.C. § 1 nt.

**Cross References.** Deduction for expenses of volunteer work, § 21-13-111.

## RESEARCH REFERENCES

**U. Ark. Little Rock L. Rev.** Survey of Legislation, 2001 Arkansas General Assembly, Tax Law, 24 U. Ark. Little Rock L. Rev. 613.

## 26-51-420. Deductions — Education service cooperative contributions.

Education service cooperatives created under The Education Service Cooperative Act of 1985, § 6-13-1001 et seq., are declared instrumentalities and political subdivisions of the State of Arkansas, and all



contributions and donations made to them in any calendar year are deductible from the Arkansas income tax levied by § 26-51-201 et seq.

**History.** Acts 1993, No. 453, § 1; 2007, No. 617, § 46; 2009, No. 655, § 6.

**Publisher's Notes.** Former § 26-51-420, concerning deductions for blood donations, was repealed by Acts 1987, No. 382, § 32. The former section was derived from

Acts 1977, No. 613, §§ 1, 2; A.S.A. 1947, §§ 84-2016.6, 84-2016.7.

**Amendments.** The 2009 amendment deleted "calendar year 1992 and" following "made to them," and made minor stylistic and punctuation changes.

## **26-51-421. [Repealed.]**

**Publisher's Notes.** This section, concerning deductions for energy-saving equipment, was repealed by Acts 2001,

No. 773, § 7. The section was derived from Acts 1977, No. 535, §§ 1, 2; A.S.A. 1947, §§ 84-2016.8, 84-2016.9.

## **26-51-422. Deductions — Fair market value of donated artistic, literary, and musical creations.**

(a) In computing net income for the purposes of the Income Tax Act of 1929, § 26-51-101 et seq., there shall be allowed as deductions in addition to all other deductions allowed by law the fair market value of donated artistic, literary, and musical creations if:

(1) The taxpayer derives at least fifty percent (50%) of his or her income for the current or the prior tax year from the pursuit of his or her art-related profession;

(2) The fair market value of the art works has been verified by an independent appraiser approved by the Department of Finance and Administration, a copy of which appraisal shall be attached to the taxpayer's state income tax return;

(3) The art works were donated to and accepted by a museum, art gallery, or nonprofit charitable organization qualified under 26 U.S.C. § 501(c)(3) and located in the State of Arkansas; and

(4) The deduction for donated art works does not exceed fifteen percent (15%) of the individual's gross income in the calendar year of the donation.

(b) This section shall be effective for income years beginning with income year 1983.

**History.** Acts 1983, No. 818, §§ 1, 2; A.S.A. 1947, § 84-2016.15.

## **26-51-423. Deductions — Expenses.**

(a) In computing net income, there shall be allowed as deductions the following expenses:

(1) **BUSINESS EXPENSES.** All of 26 U.S.C. § 162, except subsection (n), as in effect on March 30, 2010, regarding trade or business expenses, is adopted for the purpose of computing Arkansas income tax liability;

(2) **MEDICAL AND DENTAL EXPENSES.** Title 26 U.S.C. § 213, as in effect on January 1, 2011, is adopted in computing the medical and dental expense deduction under the state income tax law;

(3) **TRAVEL EXPENSES.** In determining travel expenses deductible as a business expense in computing net income as provided under subdivision (a)(1) of this section, the deduction for vehicle miles shall be determined by the Director of the Department of Finance and Administration under his or her regulatory authority in § 26-18-301; and

(4) **MOVING EXPENSES.** Title 26 U.S.C. § 217, as in effect on January 1, 2011, regarding the deduction of moving expenses, is adopted for the purpose of computing Arkansas income tax liability.

(b) Title 26 U.S.C. § 274, as in effect on January 1, 2007, regarding the deductions of expenses for entertainment, amusement, recreation, business meals, travel, et cetera, is adopted for the purpose of computing Arkansas income tax liability.

(c)(1) An individual who is self-employed shall be allowed a deduction equal to the applicable percentage as set forth in 26 U.S.C. § 162(l)(1)(B) as in effect on January 1, 1999, of the amount paid during the taxable year for insurance which constitutes medical care for the taxpayer, his or her spouse, and his or her dependents.

(2)(A) No deduction shall be allowed under this subsection to the extent that the amount of the deduction exceeds the taxpayer's earned income derived by the taxpayer from the trade or business with respect to which the plan providing the medical care coverage is established.

(B) This subsection shall not apply to any taxpayer who is eligible to participate in any subsidized health plan maintained by any employer of the taxpayer or the spouse of the taxpayer.

(3) Any amount paid by the taxpayer for insurance to which this subsection applies shall not be taken into account in computing the amount allowable to the taxpayer as a deduction under subdivision (a)(2) of this section.

(d) Title 26 U.S.C. § 221, as in effect on January 1, 2011, regarding the deduction of interest paid on qualified education loans, is adopted for the purpose of computing Arkansas income tax liability.

(e) Title 26 U.S.C. § 198, as in effect on January 1, 2011, regarding the deduction of costs paid or incurred for the cleanup of certain hazardous substances, is adopted for the purpose of computing Arkansas income tax liability.

(f) Title 26 U.S.C. § 190, as in effect on January 1, 2001, regarding the deduction of costs paid or incurred to improve access to vehicles and facilities for handicapped and elderly persons, is adopted for the purpose of computing Arkansas income tax liability.

(g)(1) A deduction pursuant to subdivision (a)(1) of this section for interest or intangible-related expenses paid by the taxpayer to a related party shall be allowed only if:

(A) The interest or intangible-related income received by the related party is subject to income tax imposed by the State of

Arkansas, another state, or a foreign government that has entered into a comprehensive income tax treaty with the United States;

(B) The interest or intangible-related income received by the related party was received pursuant to:

(i) An “arm’s length” contract or at an “arm’s length” rate of interest; and

(ii) A transaction not intended to avoid the payment of Arkansas income tax otherwise due;

(C) The taxpayer and the director enter into a written agreement prior to the due date of the taxpayer’s Arkansas income tax return:

(i) Authorizing the taxpayer to take the deduction for the tax year at issue; or

(ii) Requiring the use of an alternative method of income apportionment by the taxpayer for the tax year at issue; or

(D) During the taxable year, the related party recipient of interest or intangible related income, in a location not described in subdivision (g)(1)(A) of this section, a “non-tax location”:

(i) Operates an active trade or business in the non-tax location;

(ii) Has a minimum of fifty (50) full-time-equivalent employees in the non-tax location;

(iii) Owns real or tangible personal property with a fair market value in excess of one million dollars (\$1,000,000) located in the non-tax location; and

(iv) Has revenues generated from sources within the non-tax location in excess of one million dollars (\$1,000,000).

(2) “Related party” means a related party as defined by 26 U.S.C. § 267, as in effect on January 1, 2003.

(h) Title 26 U.S.C. § 194, as in effect on January 1, 2007, regarding the amortization of qualified reforestation expenses, is adopted for the purpose of computing Arkansas income tax liability.

**History.** Acts 1929, No. 118, Art. 3, § 13; Pope’s Dig., § 14036; Acts 1957, No. 147, § 1; 1957, No. 550, § 1; 1967, No. 95, §§ 1, 2; 1968 (1st Ex. Sess.), No. 22, § 1; 1971, No. 457, § 1; 1975, No. 271, § 1; 1979, No. 912, § 1; 1981, No. 469, § 1; 1983, No. 379, §§ 8, 9; A.S.A. 1947, §§ 84-2016, 84-2016.11; Acts 1987, No. 382, §§ 14, 23, 25; 1989, No. 826, §§ 4, 26-28; 1991, No. 685, § 5; 1993, No. 785, § 8; 1995, No. 1160, § 2; 1997, No. 951, §§ 7-10; 1997, No. 1000, § 15; 1999, No. 1126, § 30; 2001, No. 773, § 8; 2003, No. 663, § 9; 2003, No. 1286, § 1; 2005, No. 675, § 9; 2007, No. 218, §§ 24, 25; 2009, No. 372, §§ 15, 16; 2011, No. 787, §§ 20-24.

**A.C.R.C. Notes.** Pursuant to § 1-2-207, subdivision (a)(2) of this section is set out above as amended by Acts 1997, No. 1000. Subdivision (a)(2) was amended by

Acts 1997, No. 951 to read “as in effect” instead of “in effect.”

**Publisher’s Notes.** As to title, intent, and applicability of Acts 1987, No. 382, see Publisher’s Notes, § 26-51-401.

As to the short title of Acts 1989, No. 826, see Publisher’s Notes, § 26-51-403.

**Amendments.** The 2009 amendment substituted “2009” for “2005” in (a)(1) and (e).

The 2011 amendment substituted “March 30, 2010” for “January 1, 2009” in (a)(1); substituted “January 1, 2011” for “January 1, 1997” in (a)(2); substituted “January 1, 2011” for “January 1, 1995” in (a)(4); substituted “January 1, 2011” for “January 1, 2003” in (d); and substituted “January 1, 2011” for “January 1, 2009” in (e).



## RESEARCH REFERENCES

**ALR.** State income tax treatment of intangible holding companies. 11 A.L.R.6th 543.

**U. Ark. Little Rock L. Rev.** Legislation of the 1983 General Assembly, Taxation, 6 U. Ark. Little Rock L.J. 636.

Survey of Legislation, 2001 Arkansas General Assembly, Tax Law, 24 U. Ark. Little Rock L. Rev. 613.

Survey of Legislation, 2003 Arkansas General Assembly, Taxation, Interest and Intangible Expense Deductions, 26 U. Ark. Little Rock L. Rev. 500.

Survey of Legislation, 2003 Arkansas General Assembly, Education Law, Income Tax Computation, 26 U. Ark. Little Rock L. Rev. 381.

## CASE NOTES

**Oil Wells.**

Where expenses were incurred in drilling "dry hole" oil well outside of Arkansas, they were deductible from taxable income under this section. *Morley v. Pitts*, 217 Ark. 755, 233 S.W.2d 539 (1950).

**Cited:** *Wiseman v. Interstate Pub. Serv. Co.*, 191 Ark. 255, 85 S.W.2d 700 (1935).

**26-51-424. Deductions — Losses.**

(a)(1) In computing net income there shall be allowed as a deduction any loss sustained during the income year and not compensated for by insurance or otherwise.

(2) In the case of an individual, the deduction under subdivision (a)(1) of this section shall be limited to:

(A) Losses incurred in a trade or business; or

(B) Losses incurred in any transaction entered into for profit, though not connected with the trade or business.

(b) Title 26 U.S.C. § 165(h) and (i), as in effect on January 1, 2009, regarding losses arising from a casualty or a disaster, are adopted for the purpose of computing Arkansas income tax liability.

(c) Title 26 U.S.C. § 183, as in effect on January 1, 1999, regarding hobby losses, is adopted for the purpose of computing Arkansas income tax liability.

**History.** Acts 1929, No. 118, Art. 3, § 13; Pope's Dig., § 14036; Acts 1957, No. 147, § 1; 1983, No. 379, § 10; A.S.A. 1947, § 84-2016; Acts 1999, No. 1126, § 31; 2009, No. 372, § 17.

**Amendments.** The 2009 amendment deleted (a)(2)(C) and made related changes; and rewrote (b).

## RESEARCH REFERENCES

**U. Ark. Little Rock L.J.** Legislation of the 1983 General Assembly, Taxation, 6 U. Ark. Little Rock L.J. 636.

## CASE NOTES

**Cited:** Wiseman v. Interstate Pub. Serv. Co., 191 Ark. 255, 85 S.W.2d 700 (1935).

**26-51-425. Deductions — Worthless debts.**

In computing net income there shall be allowed as deductions debts ascertained to be worthless and actually charged off the books of the taxpayer within the income year.

**History.** Acts 1929, No. 118, Art. 3, § 13; Pope's Dig., § 14036; Acts 1957, No. 147, § 1; A.S.A. 1947, § 84-2016.

## CASE NOTES

**Cited:** Wiseman v. Interstate Pub. Serv. Co., 191 Ark. 255, 85 S.W.2d 700 (1935).

**26-51-426. Deductions — Reserve for bad debts or liabilities.**

Any bank, building and loan, savings and loan, or any other savings institution chartered and supervised as a savings and loan or similar associations under federal or state law shall be allowed a bad debt expense deduction computed in accordance with 26 U.S.C. §§ 582, 585, and 593, as in effect on January 1, 1999.

**History.** Acts 1929, No. 118, Art. 3, § 13; Pope's Dig., § 14036; Acts 1957, No. 147, § 1; A.S.A. 1947, § 84-2016; Acts 1993, No. 785, § 9; 1997, No. 951, § 15; 1999, No. 1126, § 32.

## CASE NOTES

**Cited:** Wiseman v. Interstate Pub. Serv. Co., 191 Ark. 255, 85 S.W.2d 700 (1935).

**26-51-427. Deductions — Net operating loss carryover.**

In addition to other deductions allowed by this chapter, there shall be allowed as a deduction from gross income a net operating loss carryover under the following rules:

(1)(A) The net operating loss as hereinbelow defined for any year ending on or after the passage of the Income Tax Act of 1929 and for any succeeding taxable year may be carried over to the next-succeeding taxable year and annually thereafter for a total period of three (3) years next succeeding the year of the net operating loss or until the net operating loss has been exhausted or absorbed by the taxable income of any succeeding year, whichever is earlier, if the loss occurred in an income year beginning before January 1, 1987. The net

operating loss deduction must be carried forward in the order named above.

(B) The net operating loss as hereinbelow defined for any year ending on or after the passage of the Income Tax Act of 1929 and for any succeeding taxable year may be carried over to the next-succeeding taxable year and annually thereafter for a total period of five (5) years next succeeding the year of the net operating loss or until the net operating loss has been exhausted or absorbed by the taxable income of any succeeding year, whichever is earlier, if the loss occurred in an income year beginning on or after January 1, 1987. The net operating loss deduction must be carried forward in the order named above.

(C) The net operating loss as hereinbelow defined which resulted from farming operations, for income years beginning on or after January 1, 1981, and expired in accordance with subdivision (1)(A) of this section before being fully used, may be carried forward for an additional two (2) years and any unused portions can be combined and either applied to tax years 1987 and 1988, respectively, or to tax years 1989 and 1990. In order to claim the additional two-year carry forward, taxpayers must attach copies of both their federal tax returns and their state tax returns, showing the net operating losses for income years beginning on or after January 1, 1981, to their state tax returns. As used in this subdivision (1)(C), "farming operations" means that at least sixty-six and two-thirds percent ( $66\frac{2}{3}\%$ ) of the total gross income, from all sources for the taxable year, must come from farming as defined by 26 U.S.C. § 464(e)(1), in effect on January 1, 1989.

(D) As used in this section, "taxable income" or "net income" shall be deemed to be the net income computed without benefit of the deduction for income taxes, personal exemptions, and credit for dependents. The net income of the taxable period to which the net operating loss deduction, as adjusted, is carried, shall be the net income before the deduction of federal income taxes, personal exemption, and credit for dependents. Such income taxes, exemptions, and credits shall not be used to increase the net operating loss which may be carried to any other taxable period.

(E)(i) As used in this section, "qualified medical company" means a corporation engaged in:

- (a) Research and development in the medical field; and
- (b) Manufacture and distribution of medical products, including therapeutic and diagnostic products.

(ii) In the case of qualified medical companies, as defined herein, a net operating loss for any taxable year shall be a net operating loss carryover to each of the fifteen (15) taxable years following the taxable year of the loss.

(iii) If the qualified medical company is an "S" corporation, the pass-through provisions of § 26-51-409, as in effect for the taxable year of the loss, shall be applicable.



(iv) The net operating loss provisions set forth above, which resulted from the operation of a qualified medical company, shall be effective for taxable years beginning on and after January 1, 1987;

(2) As used in this section, "net operating loss" is defined as the excess of allowable deductions over gross income for the taxable year, subject to the following adjustments:

(A) There shall be added to gross income all nontaxable income, not required to be reported as gross income, as provided by law, less any expenses properly and reasonably incurred in earning nontaxable income, which expenses would otherwise be nondeductible;

(B) In the case of a taxpayer other than a corporation, deductions, not including federal income taxes, not attributable to the operation of the trade or business shall be eliminated from the deductions otherwise allowable for the taxable year to the extent that they exceed gross income not derived from trade or business. Personal exemptions and credit for dependents shall not be a deduction for the purpose of computing a net operating loss;

(C) No net operating loss deduction shall be allowed; and

(D) In the case of a taxpayer other than a "C corporation," as defined in 26 U.S.C. § 1361, as in effect on January 1, 1985:

(i) For income years beginning after December 31, 1986, the amount deductible on account of losses from sales or exchanges of capital assets shall not exceed the amount includable on account of gains from sales or exchanges of capital assets; and

(ii) For income years beginning after December 31, 1986, the deduction for long-term capital gains provided by 26 U.S.C. § 1202 [repealed], as in effect on January 1, 1985, shall not be allowed; and

(3) In the case of the acquisition of assets of one (1) corporation by another corporation, the acquiring corporation shall succeed to and take into account any net operating loss carryover apportionable to Arkansas, under the Uniform Division of Income for Tax Purposes Act, § 26-51-701 et seq., that the acquired corporation could have claimed had it not been acquired, subject to the following conditions:

(A) The net operating loss may not be carried forward to a taxable year which ends more than three (3) years after the taxable year in which the loss occurred if the loss occurred in an income year beginning before January 1, 1987;

(B) The net operating loss may not be carried forward to a taxable year which ends more than five (5) years after the taxable year in which the loss occurred if the loss occurred in an income year beginning on or after January 1, 1987; and

(C) The net operating loss may be claimed only when the ownership of both the acquired and acquiring corporations is substantially the same, that is, where not less than eighty percent (80%) of the voting stock of each corporation is owned by the same person or where prior to the acquisition the acquiring corporation owned at least eighty percent (80%) of the voting stock of the acquired corporation. The carryover losses will be allowed only in those cases

where the assets of the corporation going out of existence earn sufficient profits apportionable to Arkansas under § 26-51-701 et seq. in the post-merger period to absorb the carryover losses claimed by the surviving corporation.

**History.** Acts 1929, No. 118, Art. 3, § 13; Pope's Dig., § 14036; Acts 1957, No. 147, § 1; 1975, No. 676, § 1; 1979, No. 740, § 1; 1985, No. 848, § 2; 1985 (1st Ex. Sess.), No. 20, § 2; 1985 (1st Ex. Sess.), No. 32, § 2; A.S.A. 1947, § 84-2016; Acts 1987, No. 382, §§ 18, 19; 1989, No. 615, § 1; 1995, No. 586, § 4.

**Publisher's Notes.** In reference to the term "passage of the Income Tax Act of 1929", in (1)(A) and (B), Acts 1929, No. 118, § 44, contained an emergency clause which provided that the act would take

effect and be in force from and after its passage. The act was approved and signed by the Governor on March 9, 1929.

As to title, intent, and applicability of Acts 1987, No. 382, see Publisher's Notes, § 26-51-401.

**Meaning of "Income Tax Act of 1929".** See note to § 26-51-101.

**U.S. Code.** 26 U.S.C. § 1202, as in effect on January 1, 1985, referred to in this section was repealed by P.L. 99-514. A new 26 U.S.C. § 1202 was enacted by P.L. 103-66.

## RESEARCH REFERENCES

**ALR.** Sales and use tax exemption for medical supplies. 30 A.L.R.5th 494.

Construction and application of state

corporate income tax statutes allowing net operation loss deductions. 33 A.L.R.5th 509.

## CASE NOTES

### ANALYSIS

Corporate Acquisitions.

Dividends.

Nonbusiness Income.

### Corporate Acquisitions.

Following a statutory merger of two corporations that had common stock ownership, where the business of the surviving corporation was not altered, enlarged, or materially affected by the merger, but constituted a continuation of the business enterprise on a sounder financial basis, a net operating loss carryover of the merged corporation was available to the surviving corporation as a deduction for state income tax purposes. *Bracy Dev. Co. v. Milam*, 252 Ark. 268, 478 S.W.2d 765 (1972).

Where a certificate of indebtedness had been filed and an execution issued upon acquiring corporation's income tax return, the return was pending on the effective date of Acts 1975, No. 676, which provided that an acquiring corporation would succeed to any net operating loss carryover that the acquired corporation could have claimed, and therefore the certificate of indebtedness was void. *Skelton v. B.C.*

*Land Co.*, 260 Ark. 122, 539 S.W.2d 411 (1976).

Evidence was sufficient to support the chancellor's decision that the surviving corporation had presented a prima facie case to prove that the equipment acquired by the surviving corporation in the merger had generated income in an amount sufficient to absorb the carryover net operating loss claimed by the surviving corporation. *Jones v. Carter Constr. Co.*, 266 Ark. 358, 583 S.W.2d 63 (1979).

### Dividends.

For the restricted purpose of computing the net operating loss to be carried forward, parent company was required to add back to its gross income nontaxable dividend income from its subsidiary. *Kansas City S. Ry. v. Pledger*, 301 Ark. 564, 785 S.W.2d 462 (1990).

### Nonbusiness Income.

Nonbusiness income items such as rents, interest, and dividends (which although clearly defined as "gross income" under statute, were not required to be "reported as gross income" for purposes of taxation by state, but merely for purposes of allocation under the Uniform Division

of Income for Tax Purposes Act, 26-51-701 et seq.) were properly added to gross income in calculating net operating loss under this section. *St. Louis S.W. Ry. v. Ragland*, 304 Ark. 1, 800 S.W.2d 410 (1990).

**Cited:** *Wiseman v. Interstate Pub. Serv. Co.*, 191 Ark. 255, 85 S.W.2d 700 (1935).

**26-51-428. Depreciation — Deductions — Expensing of property.**  
**[Effective until contingency in Acts 2007, No. 613, § 2 is met.]**

(a) Title 26 U.S.C. §§ 167, 168(a)-(j), and 179A, as in effect on January 1, 2009, and 26 U.S.C. § 179, as in effect on January 1, 2009, regarding depreciation and expensing of property, are adopted for the purpose of computing Arkansas income tax liability for property purchased in tax years beginning on or after January 1, 2009.

(b) The basis on which exhaustion, wear and tear, and obsolescence are to be allowed in respect to any property shall be the adjusted basis provided in § 26-51-411 for the purpose of determining the gain on the sale or other disposition of the property.

(c) Title 26 U.S.C. § 197, as in effect on January 1, 2007, regarding the amortization of goodwill and certain other intangibles, is adopted for the purpose of computing Arkansas income tax liability.

**History.** Acts 1929, No. 118, Art. 3, § 13; Pope's Dig., § 14036; Acts 1957, No. 147, § 1; 1957, No. 156, § 1; 1983, No. 379, §§ 8-11; 1983, No. 854; §§ 1, 5; A.S.A. 1947, §§ 84-2016, 84-2016.16; Acts 1987, No. 382, §§ 17, 32; 1989, No. 826, §§ 29, 30; 1991, No. 685, § 7; 1995, No. 1160, § 4; 1997, No. 951, § 12; 1999, No. 1126, § 33; 2007, No. 218, § 26; 2009, No. 372, § 18.

**A.C.R.C. Notes.** Acts 2007, No. 613, § 2, provided: "The provisions of this act shall not be effective until the Chief Fiscal Officer of the State certifies that additional funding has been provided to state general revenues from other funding sources and is available for use during fiscal year 2008 and fiscal year 2009 in an amount sufficient to replace the general revenue reduction for each of the fiscal years 2008 and 2009 that would result from the adoption of the provisions of section 179 of the Internal Revenue Code,

as in effect on January 1, 2007, as provided by this act."

The Chief Fiscal Officer of the State made the certification described in Acts 2007, No. 613, § 2, on August 10th, 2007, making this version of § 26-51-428 expire. However, Acts 2009, No. 372, § 18, amended the expired version of § 26-51-428.

**Publisher's Notes.** As to title, intent, and applicability of Acts 1987, No. 382, see Publisher's Notes, § 26-51-401.

As to the short title of Acts 1989, No. 826, see Publisher's Notes, § 26-51-403.

For text effective if contingency in Acts 2007, No. 613, § 2 is met, see the following version.

**Amendments.** The 2009 amendment, in (a), substituted the first instance of "January 1, 2009" for "January 1, 1999" and the second instance for "January 1, 2007," and inserted "for property purchased in tax years beginning on or after January 1, 2009."

## RESEARCH REFERENCES

**U. Ark. Little Rock L.J.** Legislation of the 1983 General Assembly, Taxation, 6 U. Ark. Little Rock L.J. 636.



## CASE NOTES

**Common Carriers.**

A corporation engaged in interstate and intrastate transportation of property as a common carrier held not free to calculate and claim depreciation as it desires under this section. *Cheney v. East Tex. Motor*

*Freight, Inc.*, 233 Ark. 675, 346 S.W.2d 513 (1961).

**Cited:** *Wiseman v. Interstate Pub. Serv. Co.*, 191 Ark. 255, 85 S.W.2d 700 (1935).

**26-51-428. Depreciation — Deductions — Expensing of property.**  
**[Effective if contingency in Acts 2007, No. 613, § 2 is met.]**

(a) Title 26 U.S.C. §§ 167, 168, and 179A, as in effect on January 1, 1999, and 26 U.S.C. § 179 as in effect on January 1, 2007, regarding depreciation and expensing of property, are adopted for the purpose of computing Arkansas income tax liability.

(b) The basis on which exhaustion, wear and tear, and obsolescence are to be allowed in respect to any property shall be the adjusted basis provided in § 26-51-411 for the purpose of determining the gain on the sale or other disposition of the property.

(c) Title 26 U.S.C. § 197, as in effect on January 1, 2007, regarding the amortization of goodwill and certain other intangibles, is adopted for the purpose of computing Arkansas income tax liability.

**History.** Acts 1929, No. 118, Art. 3, § 13; Pope's Dig., § 14036; Acts 1957, No. 147, § 1; 1957, No. 156, § 1; 1983, No. 379, §§ 8-11; 1983, No. 854; §§ 1, 5; A.S.A. 1947, §§ 84-2016, 84-2016.16; Acts 1987, No. 382, §§ 17, 32; 1989, No. 826, §§ 29, 30; 1991, No. 685, § 7; 1995, No. 1160, § 4; 1997, No. 951, § 12; 1999, No. 1126, § 33; 2007, No. 218, § 26; 2007, No. 613, § 1.

**A.C.R.C. Notes.** Acts 2007, No. 613, § 2, provided: "The provisions of this act shall not be effective until the Chief Fiscal Officer of the State certifies that additional funding has been provided to state general revenues from other funding sources and is available for use during fiscal year 2008 and fiscal year 2009 in an

amount sufficient to replace the general revenue reduction for each of the fiscal years 2008 and 2009 that would result from the adoption of the provisions of section 179 of the Internal Revenue Code, as in effect on January 1, 2007, as provided by this act."

The Chief Fiscal Officer of the State made the certification described in Acts 2007, No. 613, § 2, on August 10th, 2007, making this version of § 26-51-428 effective. However, Acts 2009, No. 372, § 18, amended the expired version of § 26-51-428.

**Publisher's Notes.** For text effective until contingency in Acts 2007, No. 613, § 2 is met, see the preceding version.

## RESEARCH REFERENCES

**U. Ark. Little Rock L.J.** Legislation of the 1983 General Assembly, Taxation, 6 U. Ark. Little Rock L.J. 636.

## CASE NOTES

**Common Carriers.**

A corporation engaged in interstate and intrastate transportation of property as a common carrier held not free to calculate and claim depreciation as it desires under this section. *Cheney v. East Tex. Motor*

*Freight, Inc.*, 233 Ark. 675, 346 S.W.2d 513 (1961).

**Cited:** *Wiseman v. Interstate Pub. Serv. Co.*, 191 Ark. 255, 85 S.W.2d 700 (1935).

**26-51-429. Deductions — Depletion allowances.**

(a) In the case of all natural resources for which a deduction for depletion is allowed under 26 U.S.C. §§ 611, the provisions of 26 U.S.C. §§ 611-613, 614, 616, and 617, as in effect on January 1, 2007, are adopted in computing the depletion allowance deduction under Arkansas income tax law.

(b) In computing the depletion allowance deduction allowed by this section for oil and gas wells, the provisions of 26 U.S.C. § 613 are not in effect, but instead the computation of the amount of the depletion deduction is controlled by the provisions of 26 U.S.C. § 613A, as in effect on January 1, 2011, which are adopted as part of the state income tax law.

**History.** Acts 1929, No. 118, Art. 3, § 13; Pope's Dig., § 14036; Acts 1939, No. 140, § 1; 1947, No. 335, § 3; 1965, No. 499, § 1; 1983, No. 854, § 4; A.S.A. 1947, § 84-2016; Acts 1989, No. 826, § 31; 1991, No. 685, § 10; 1999, No. 1126, § 34; 2005, No. 675, § 10; 2007, No. 218, § 27; 2009, No. 372, § 19; 2011, No. 787, § 25.

**Publisher's Notes.** As to the short title of Acts 1989, No. 826, see Publisher's Notes, § 26-51-403.

**Amendments.** The 2009 amendment substituted "2009" for "2007" in (b).

The 2011 amendment substituted "January 1, 2011" for "January 1, 2009" in (b).

## RESEARCH REFERENCES

**U. Ark. Little Rock L.J.** Legislation of the 1983 General Assembly, Taxation, 6 U. Ark. Little Rock L.J. 636.

## CASE NOTES

**Cited:** *Wiseman v. Interstate Pub. Serv. Co.*, 191 Ark. 255, 85 S.W.2d 700 (1935).

**26-51-430. Deductions — Standard deduction.**

(a)(1) In lieu of itemizing deductions, each taxpayer may elect to use the standard deduction.

(2) In the case of a married couple, both spouses must elect to use the standard deduction or both spouses must claim itemized deductions, without regard to whether the spouses file separate returns or file separately on the same return.

(b)(1) The standard deduction shall be two thousand dollars (\$2,000) per taxpayer.

(2) In the case of a married couple, each spouse shall be entitled to claim a standard deduction of two thousand dollars (\$2,000).

**History.** Acts 1929, No. 118, Art. 3, § 84-2016; Acts 1997, No. 328, § 1; 2003, § 13; Pope's Dig., § 14036; Acts 1951, No. No. 997, § 1. 124, § 1; 1957, No. 147, § 1; A.S.A. 1947,

#### CASE NOTES

**Cited:** Wiseman v. Interstate Pub. Serv. Co., 191 Ark. 255, 85 S.W.2d 700 (1935).

#### 26-51-431. Items not deductible in net income computation.

(a) In computing net income, no deduction shall in any case be allowed in respect of:

(1) Personal, living, or family expenses, except that any payments of alimony made by an individual pursuant to a court order shall be deductible;

(2) Any amount paid for new buildings or for permanent improvements or betterments made to increase the value of any property or estate;

(3) Any amount expended in restoring property for which an allowance is to be made;

(4) Premiums paid on life insurance policies; and

(5) Shrinkage in value of property.

(b) Title 26 U.S.C. § 265(a), as in effect on January 1, 1993, regarding expenses and interest relating to tax-exempt income, is hereby adopted for the purpose of computing Arkansas individual income tax liability.

(c) For the purpose of computing Arkansas corporation income tax liability, no deduction shall be allowed for:

(1) Expenses otherwise allowable as deductions which are allocable to income other than interest, whether or not any amount of income is received or accrued, wholly exempt from the taxes authorized by Arkansas law;

(2) Interest on indebtedness incurred or continued to purchase or carry obligations the interest on which is wholly exempt from the taxes imposed by Arkansas law; and

(3) Expenses otherwise allowable as deductions which are allocable to nonbusiness income.

**History.** Acts 1929, No. 118, Art. 3, 379, § 5; A.S.A. 1947, § 84-2019; Acts § 14; Pope's Dig., § 14037; Acts 1983, No. 1993, No. 785, § 17.



## RESEARCH REFERENCES

**U. Ark. Little Rock L.J.** Legislation of the 1983 General Assembly, Taxation, 6 U. Ark. Little Rock L.J. 636.

**26-51-432 — 26-51-434. [Repealed.]**

**Publisher's Notes.** These sections, concerning a delivered meal program, a War Memorial Stadium improvement and expansion program, and a nongame preservation program, were repealed by Acts 1993, No. 943, § 1. They were derived from the following sources:

26-51-432. Acts 1991, No. 172, §§ 1-4.

26-51-433. Acts 1981, No. 545, § 1(b)-(d); 1981 (1st Ex. Sess.), No. 21, § 4; A.S.A. 1947, §§ 84-2016.12, 84-2016.13; Acts 1987, No. 879, §§ 10, 11, 13.

26-51-434. Acts 1983, No. 475, § 2; A.S.A. 1947, § 84-2016.14; Acts 1987, No. 879, §§ 12, 13.

**26-51-435. Nonresidents or part-year residents.**

(a) Nonresidents or part-year residents of Arkansas shall compute their taxable income as if all income were earned in Arkansas.

(b) Using Arkansas income tax rates, nonresident or part-year residents of Arkansas shall compute their tax liability on the amount computed in subsection (a) of this section.

(c) From the tax liability computed in subsection (b) of this section there shall be deducted all allowable credits to determine the amount of tax due.

(d)(1) Nonresidents shall divide adjusted gross income from Arkansas sources by the adjusted gross income from all sources to arrive at the applicable percentage that Arkansas adjusted gross income represents of all adjusted gross income received by the taxpayer in the income year.

(2) Part-year residents shall divide adjusted gross income received while an Arkansas resident by the adjusted gross income from all sources to arrive at the applicable percentage that the adjusted gross income received while an Arkansas resident represents of all adjusted gross income received by the taxpayer in the income year.

(e) Nonresidents and part-year residents shall multiply the amount computed in subsection (c) of this section by the applicable percentage from subsection (d) of this section in order to determine the amount of income tax which must be paid to the State of Arkansas.

(f) For the purpose of ascertaining the income tax due by a nonresident or part-year resident of Arkansas with income derived from two (2) or more states, the credit available under § 26-51-504 for income tax paid to other states shall be calculated in the following manner:

(1) The credit shall not exceed what the tax would be on the outside income, if added to the Arkansas income, and calculated at Arkansas income tax rates; and

(2) The credit is limited to the total income tax owed to other states on income that has been:

- (A) Reported as taxable income to both Arkansas and the other states;
- (B) Reported as income from all sources; and
- (C) Included as Arkansas income.

**History.** Acts 1987, No. 382, § 12; and applicability of Acts 1987, No. 382, see 1997, No. 951, § 20; 2003, No. 662, § 1. Publisher's Notes, § 26-51-401.

**Publisher's Notes.** As to title, intent,

## 26-51-436. Deductions — Limitations.

Notwithstanding any other provision of the Income Tax Act of 1929 with regard to deductions allowed in computing net income:

(1) Title 26 U.S.C. § 465, as in effect on January 1, 1987, is adopted to limit deductions claimed under the Income Tax Act of 1929 to the amount the taxpayer has at risk, as that term is used in the federal income tax law;

(2) Title 26 U.S.C. § 469, as in effect on January 1, 1997, regarding the limitations on deductibility of passive activity losses and credits, is adopted for the purpose of computing Arkansas income tax liability;

(3) Title 26 U.S.C. § 280F(a)-(d), as in effect on January 1, 2011, regarding investment tax credit and depreciation for luxury automobiles and other property, is adopted for purposes of computing Arkansas income tax liability;

(4) Title 26 U.S.C. § 68, as in effect on January 1, 2011, is adopted to limit itemized deductions;

(5) Title 26 U.S.C. § 220, as in effect on January 1, 2011, regarding the deductibility from income of contributions made to a medical savings account by the taxpayer or the taxpayer's employer, is adopted for the purpose of computing Arkansas income tax liability;

(6) Title 26 U.S.C. § 264, as in effect on January 1, 1999, regarding premium and interest deductions on life insurance of officers and employees, is adopted for the purpose of computing Arkansas income tax liability; and

(7) Title 26 U.S.C. § 470, as in effect on January 1, 2009, regarding leasing transactions between taxpayers, is adopted for the purpose of computing Arkansas income tax liability.

**History.** Acts 1929, No. 118, Art. 3, § 13; 1987, No. 382, § 21; 1989, No. 826, §§ 5, 32; 1991, No. 95, § 4; 1991, No. 685, § 3; 1995, No. 1160, § 1; 1997, No. 951, §§ 14, 21; 1997, No. 1000, § 16; 1999, No. 1126, § 35; 2001, No. 634, § 1; 2003, No. 336, § 1; 2003, No. 663, § 10; 2005, No. 94, § 5; 2005, No. 675, § 11; 2007, No. 218, § 28; 2009, No. 372, §§ 20, 21; 2011, No. 787, §§ 26-28.

**Publisher's Notes.** As to title, intent, and applicability of Acts 1987, No. 382, see Publisher's Notes, § 26-51-401.

As to the short title of Acts 1989, No. 826, see Publisher's Notes, § 26-51-403.

**Amendments.** The 2009 amendment substituted "2009" for "1995" in (4); and substituted "2009" for "2007" in (7).

The 2011 amendment, in (3), substituted "January 1, 2011" for "January 1, 1999" and inserted "and other property"; substituted "January 1, 2011" for "January 1, 2009" in (4); and substituted "January 1, 2011" for "January 1, 2005" in (5).

**Meaning of "Income Tax Act of 1929".** See note to § 26-51-101.

**RESEARCH REFERENCES**

**U. Ark. Little Rock L. Rev.** Survey of Legislation, 2003 Arkansas General Assembly, Education Law, Income Tax Computation, 26 U. Ark. Little Rock L. Rev. 381.

**26-51-437. Miscellaneous itemized deductions.**

(a) In the case of an individual, the miscellaneous itemized deductions for any taxable year shall be allowed only to the extent that the aggregate of those deductions exceeds two percent (2%) of adjusted gross income.

(b) As used in this section, "miscellaneous itemized deductions" means the itemized deductions other than:

(1) The deduction allowed under § 26-51-423(a)(1) relating to expenses in carrying on a trade or business. However, employee business expenses which are not reimbursed by the employer are miscellaneous itemized deductions;

(2) The deduction allowed under § 26-51-423(a)(2) relating to medical, dental, drug, and related health care expenses;

(3) The deduction allowed under § 26-51-415 relating to interest;

(4) The deduction allowed under § 26-51-416 relating to taxes;

(5) The deduction allowed under § 26-51-424 relating to losses;

(6) The deduction allowed under § 26-51-419 relating to charitable contributions;

(7) The deduction allowed under § 26-51-422 relating to the donation of artistic, literary, and musical creations; and

(8) The deduction allowed under § 26-51-418.

**History.** Acts 1987, No. 382, § 28; and applicability of Acts 1987, No. 382, see 1991, No. 708, § 3; 1995, No. 1296, § 84. Publisher's Notes, § 26-51-401.

**Publisher's Notes.** As to title, intent,

**26-51-438. [Repealed.]**

**Publisher's Notes.** This section, concerning contributions to a cancer research fund, was repealed by Acts 1993, No. 943, § 1. The section was derived from Acts 1987, No. 879, §§ 2-9, 13.

**26-51-439. Capitalization of certain expenses.**

(a) Title 26 U.S.C. § 263A(a)-(h) as in effect on January 1, 2007, regarding capitalization and inclusion in inventory costs of certain expenses, are adopted for the purpose of computing Arkansas income tax liability.

(b) Title 26 U.S.C. § 195, as in effect on January 1, 2001, regarding capitalization and amortization of a corporation's start-up expenses, is adopted for the purpose of computing Arkansas income tax liability.

(c) Title 26 U.S.C. § 248, as in effect on January 1, 2005, regarding capitalization and amortization of a corporation's organizational ex-



penses, is adopted for the purpose of computing Arkansas income tax liability.

(d) Title 26 U.S.C. § 709, as in effect on January 1, 2007, regarding the amortization of partnership organizational expenses, is adopted for the purpose of computing Arkansas income tax liability.

**History.** Acts 1989, No. 826, § 8; 2001, No. 773, § 9; 2005, No. 675, § 12; 2007, No. 218, §§ 29, 30.

**Publisher's Notes.** As to the short title of Acts 1989, No. 826, see Publisher's Notes, § 26-51-403.

## RESEARCH REFERENCES

**U. Ark. Little Rock L. Rev.** Survey of Legislation, 2001 Arkansas General Assembly, Tax Law, 24 U. Ark. Little Rock L. Rev. 613.

### 26-51-440. Federal Subchapter M adopted.

(a)(1) Subchapter M of the Internal Revenue Code, 26 U.S.C. § 851 et seq., as in effect on January 1, 2011, relating to regulated investment companies, real estate investment trusts, and financial asset securitization investment trusts, is adopted for the purpose of computing Arkansas income tax liability and shall govern all corporations that are registered as investment companies under the Investment Company Act of 1940, 15 U.S.C. § 80a-1 et seq., as in effect on January 1, 2011.

(2)(A) However, those provisions of Subchapter M of the Internal Revenue Code, 26 U.S.C. § 851 et seq., addressing the tax rates applied to financial asset securitization investment trust income are not adopted.

(B) Any financial asset securitization investment trust income subject to Arkansas income tax shall be taxed at the rates set forth in § 26-51-205.

(b) As used in this section:

(1)(A) "Captive real estate investment trust" means a real estate investment trust the shares or beneficial interests of which are not regularly traded on an established securities market and more than fifty percent (50%) of the voting power or value of the beneficial interests or shares of which are owned or controlled, directly, indirectly, or constructively by a single entity that is:

(i) Treated as an association taxable as a corporation under the Internal Revenue Code, 26 U.S.C. § 1 et seq., as in effect on January 1, 2009; and

(ii) Not exempt from federal income tax under 26 U.S.C. § 501(a), as in effect on January 1, 2009.

(B) "Captive real estate investment trust" does not include a real estate investment trust that is intended to be regularly traded on an established securities market and that satisfies the requirements of 26 U.S.C. § 856(a)(5) and (6), as in effect on January 1, 2009, by reason of 26 U.S.C. § 856(h)(2), as in effect on January 1, 2009; and

(2) "Real estate investment trust" means the same as defined in 26 U.S.C. § 856, as in effect on January 1, 2009.

(c) For purposes of applying subdivision (b)(1)(A)(i) of this section, the following entities are not considered an association taxable as a corporation under the Internal Revenue Code, 26 U.S.C. § 1 et seq.:

(1) A real estate investment trust other than a captive real estate investment trust;

(2) A qualified real estate investment trust subsidiary under 26 U.S.C. § 856(i), as in effect on January 1, 2009, other than a qualified real estate investment trust subsidiary of a captive real estate investment trust;

(3) A listed Australian Property Trust, meaning an Australian unit trust registered as a Managed Investment Scheme under the Australian Corporations Act 2001 in which the principal class of units is listed on a recognized stock exchange in Australia and is regularly traded on an established securities market, or an entity organized as a trust, provided that a Listed Australian Property Trust owns or controls, directly or indirectly, seventy-five percent (75%) or more of the voting power or value of the beneficial interests or shares of such trust; or

(4) A qualified Foreign Entity, meaning a corporation, trust, association, or partnership organized outside the laws of the United States and which satisfies the following criteria:

(A) At least seventy-five percent (75%) of the entity's total asset value at the close of its taxable year is represented by real estate assets, as defined in 26 U.S.C. § 856(c)(5)(B), as in effect on January 1, 2009, including shares or certificates of beneficial interest in any real estate investment trust, cash and cash equivalents, and United States Government securities;

(B) The entity is not subject to tax on amounts distributed to its beneficial owners or is exempt from entity-level taxation;

(C) The entity distributes at least eighty-five percent (85%) of its taxable income, as computed in the jurisdiction in which it is organized, to the holders of its shares or certificates of beneficial interest on an annual basis;

(D) More than ten percent (10%) of the voting power or value in the entity is not held directly, indirectly, or constructively by a single entity or individual, or the shares or beneficial interests of the entity are regularly traded on an established securities market; and

(E) The entity is organized in a country that has a tax treaty with the United States.

(d) The dividends-paid deduction otherwise allowed by federal law in computing net income of a real estate investment trust that is subject to federal income tax shall be added back in computing the tax imposed by the Income Tax Act of 1929, § 26-51-101 et seq., if the real estate investment trust is a captive real estate investment trust.

(e)(1) A real estate investment trust that does not become regularly traded on an established securities market within one (1) year of the date on which it first became a real estate investment trust shall not be considered to have been regularly traded on an established securities market, retroactive to the date it first became a real estate investment

trust, and the owner of the real estate investment trust shall file an amended return reflecting the retroactive designation for any tax year or part year occurring during its initial year of status as a real estate investment trust.

(2) Under this section, a real estate investment trust becomes a real estate investment trust on the first day that it has:

(A) Met the requirements of 26 U.S.C. § 856 as in effect on January 1, 2009; and

(B) Elected to be treated as a real estate investment trust under 26 U.S.C. § 856(c)(1), as in effect on January 1, 2009, by the owner of the real estate investment trust.

(f) Under this section, the constructive ownership rules of 26 U.S.C. § 318(a), as in effect on January 1, 2009, as modified by 26 U.S.C. § 856(d)(5), as in effect on January 1, 2009, shall apply in determining the ownership of stock, assets, or net profits of a person.

(g) An election made for federal income tax purposes under Subchapter M of the Internal Revenue Code, 26 U.S.C. § 851 et seq., as in effect on January 1, 2009, shall be deemed made for state income tax purposes.

(h) This section shall take effect and be enforced for tax years beginning on or after January 1, 2009.

**History.** Acts 1989, No. 583, § 5; 1995, No. 1160, § 13; 1997, No. 951, § 24; 1999, No. 1126, § 36; 2001, No. 773, § 10; 2007, No. 218, § 31; 2007, No. 827, § 217; 2009, No. 372, § 22; 2011, No. 787, § 29.

**A.C.R.C. Notes.** This section was amended by Acts 2007, No. 827, § 217. However, pursuant to Acts 2007, No. 827, § 240, this section is set out as amended by Acts 2007, No. 218, § 31.

**Amendments.** The 2009 amendment substituted “2009” for “2007” twice in (a)(1) and in (g) and (h); inserted (b) through (f) and redesignated the remaining subsections accordingly; and made a minor stylistic change.

The 2011 amendment substituted “January 1, 2011” for “January 1, 2009” twice in (a)(1).

## RESEARCH REFERENCES

**U. Ark. Little Rock L. Rev.** Survey of Legislation, 2001 Arkansas General Assembly, Tax Law, 24 U. Ark. Little Rock L. Rev. 613.

### 26-51-441. [Transferred].

**Publisher's Notes.** This section has been transferred to § 26-51-2501.

### 26-51-442. Sale of property to comply with conflict-of-interest requirements.

Title 26 U.S.C. § 1043, as in effect on January 1, 1993, is hereby adopted.

**History.** Acts 1993, No. 785, § 18.



**26-51-443. Allocation of unstated interest — Foregone interest.**

(a) Title 26 U.S.C. § 483, as in effect on January 1, 1999, regarding the allocation of unstated interest, is adopted for the purpose of computing Arkansas income tax liability.

(b) Title 26 U.S.C. § 7872, as in effect on January 1, 2007, regarding the taxation of foregone interest on a below-market loan, is adopted for the purpose of computing Arkansas income tax liability.

**History.** Acts 1993, No. 785, § 10; 1997, No. 951, § 18; 1999, No. 1126, § 37; 2007, No. 218, § 32.

**26-51-444. Deductions — Soil and water conservation.**

Title 26 U.S.C. § 175, as in effect on January 1, 1995, regarding the deduction of certain expenditures related to soil and water conservation is hereby adopted.

**History.** Acts 1995, No. 560, § 2.

**A.C.R.C. Notes.** As enacted by Acts 1995, No. 560, § 2, this section began:

“Effective for taxable years beginning on or after January 1, 1995.”

**26-51-445. Adoption expenses.**

(a) Title 26 U.S.C. § 23, as in effect on January 1, 2003, and 26 U.S.C. § 36C, as in effect on January 1, 2011, are adopted for purposes of determining the allowable credit for adoption-related fees, costs, and expenses paid or incurred by a taxpayer.

(b)(1) The amount of credit allowed against Arkansas income tax due is twenty percent (20%) of the federal credit as calculated under 26 U.S.C. §§ 23 and 36C.

(2) The amount of the credit that may be used by a taxpayer for a taxable year may not exceed the amount of income tax otherwise due.

**History.** Acts 1995, No. 535, §§ 1-4; 1997, No. 951, § 32; 1999, No. 1126, § 38; 2003, No. 663, § 11; 2011, No. 787, § 30.

**Amendments.** The 2011 amendment

inserted “and Section 36C of the Internal Revenue Code of 1986, as in effect on January 1, 2011” in (a); added “and § 36C” in (b)(1); and added (b)(2).

**RESEARCH REFERENCES**

**U. Ark. Little Rock L. Rev.** Survey of Legislation, 2003 Arkansas General Assembly, Education Law, Income Tax Com-

putation, 26 U. Ark. Little Rock L. Rev. 381.

**26-51-446. Long-term intergenerational security.**

(a)(1) All distributions of funds other than principal from the trust shall be taxable as provided in the Income Tax Act of 1929, § 26-51-101 et seq.

(2) All distributions from the trust shall be deemed principal until all contributions of principal have been withdrawn.

(b)(1) In addition to any income tax imposed for distributions from the long term intergenerational trust as provided in subsection (a) of this section, there is hereby imposed a twenty percent (20%) penalty on all distributions from the trust in violation of this section or the Long-Term Intergenerational Security Act of 1995, § 28-72-501 et seq.

(2) The penalty shall be collected by the Department of Finance and Administration and shall be deposited into the State Treasury as general revenue.

(c) A beneficiary must file a copy of the long-term intergenerational security trust agreement with his or her income tax return for each taxable year the beneficiary claims the tax benefits provided in this section and the Long-Term Intergenerational Security Act of 1995, § 28-72-501 et seq.

(d) Upon the death of the beneficiary, all funds remaining in the long-term intergenerational security trust shall be distributed to the beneficiary's estate, and all undistributed income shall be included in the beneficiary's final tax return.

**History.** Acts 1995, No. 1303, §§ 4, 5, 7, 8.

### **26-51-447. Deductions — Tuition to post-secondary educational institutions.**

(a) In computing net income for the purposes of the Income Tax Act of 1929, § 26-51-101 et seq., there shall be allowed as a deduction in addition to all other deductions allowed by law for a portion of the amount paid by the taxpayer as tuition for the taxpayer, the taxpayer's spouse or dependent to attend a post-secondary educational institution. The deduction shall be equal to fifty percent (50%) of the lesser of either the amount of tuition paid or the weighted average tuition for post-secondary educational institutions of the same classification.

(b) On or before November 30, 1998, of each year thereafter, the Director of the Department of Finance and Administration shall determine the weighted average tuition of post-secondary institutions of each of the following classifications:

- (1) Four-year institutions of higher education;
- (2) Two-year institutions of higher education; and
- (3) Technical institutes.

(c)(1) As used in this section, "weighted average tuition" means the tuition cost resulting from the following calculation:

(A) Add the products of the annual tuition at each state-supported post-secondary institution of the same classification multiplied by that institution's total number of fiscal-year-equated students; and

(B) Divide the gross total of the product from subdivision (c)(1)(A) of this section by the total number of fiscal-year-equated students attending each state-supported post-secondary institution of the same classification.

(2) For four-year institutions of higher education only undergraduate tuition and undergraduate students shall be used in calculating weighted average tuition.

**History.** Acts 1997, No. 1075, § 1.

### **26-51-448. Educational individual retirement accounts.**

(a) Title 26 U.S.C. § 530, as in effect on January 1, 2011, relating to educational individual retirement accounts, is adopted for the purposes of computing Arkansas income tax liability.

(b) Any additional tax or penalty imposed by this section shall be ten percent (10%) of the amount of any additional tax or penalty provided in the federal income tax law adopted by this section.

**History.** Acts 1999, No. 513, § 2; 2003, No. 218, § 2; 2005, No. 675, § 13; 2009, No. 372, § 23; 2011, No. 787, § 31. The 2011 amendment substituted "January 1, 2011" for "January 1, 2009" in (a).

**Amendments.** The 2009 amendment substituted "2009" for "2005" in (a).

### **RESEARCH REFERENCES**

**U. Ark. Little Rock L. Rev.** Survey of Provisions, 26 U. Ark. Little Rock L. Rev. Legislation, 2003 Arkansas General Assembly, Taxation, Internal Revenue Code 495.

### **26-51-449. [Transferred].**

**Publisher's Notes.** This section has been transferred to § 26-51-2503.

### **26-51-450. Deductions — Small business guaranty fees.**

(a) In computing net income, there shall be allowed as a deduction the amount paid during a taxable year to the United States Small Business Administration as a guaranty fee associated with the acquisition of Small Business Administration financing.

(b) The deduction shall be taken only by the small business which is the primary obligor in the financing transaction and which paid the fee.

(c) "Small business" means any corporation, partnership, sole proprietorship, limited liability corporation, or other business entity qualifying as "small" under the standards contained in 13 C.F.R. § 121, as in effect on January 1, 2001.

(d) The Revenue Division of the Department of Finance and Administration may promulgate regulations as necessary to administer this section.

**History.** Acts 2001, No. 1558, § 1.



## RESEARCH REFERENCES

**U. Ark. Little Rock L. Rev.** Survey of Legislation, 2001 Arkansas General Assembly, Tax Law, 24 U. Ark. Little Rock L. Rev. 613.

**26-51-451, 26-51-452. [Transferred].**

**Publisher's Notes.** These sections have been transferred to § 26-51-2505.

**26-51-453. Health savings accounts.**

(a) Title 26 U.S.C. § 223(a)-(d), (e)(2), (f), and (g), as in effect on January 1, 2011, regarding a deduction from income for amounts deposited to health savings accounts, is adopted for purposes of computing Arkansas income tax liability.

(b) A health savings account is exempt from tax under this chapter unless it no longer meets the requirements of subsection (a) of this section.

**History.** Acts 2005, No. 94, § 1; 2007, No. 218, § 33; 2011, No. 787, § 32. substituted "January 1, 2011" for "January 1, 2007" in (a).

**Amendments.** The 2011 amendment

**26-51-454. [Transferred].**

**Publisher's Notes.** This section has been transferred to § 26-51-2507.

**26-51-455. [Transferred].**

**Publisher's Notes.** This section has been transferred to § 26-51-2508.

**26-51-456. [Transferred].**

**Publisher's Notes.** This section has been transferred to § 26-51-2509.

## SUBCHAPTER 5 — TAX CREDITS GENERALLY

## SECTION.

- 26-51-501. Personal tax credits.
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## SECTION.

26-51-513. Arkansas historic rehabilitation income tax credit.

26-51-514. Cigarette receptacle tax credit

[Effective if contingency in Acts 2009, No. 1500, § 2 is met].

**A.C.R.C. Notes.** Acts 2007, No. 518, § 3, as amended by Acts 2009, No. 349, § 1, and Acts 2011, No. 738, § 1, provided:

"Definitions.

"As used in this act:

"(1) 'Economically distressed area' means a county-wide area in Arkansas in which the percentage of families that earn income below poverty level exceeds twenty-three percent (23%), based on year 2010 income levels as compiled by the Bureau of the Census, United States Department of Commerce demographic profiles;

"(2) 'Geotourism' means tourism that sustains or enhances the geographical character of an area including without limitation, its environment, heritage, aesthetics, culture, natural resources, and well-being of its residents.

"(3) 'Geotourism attraction' means an environmental, aesthetic, cultural, or natural point of interest in an area of natural phenomena or scenic beauty that attracts tourists to experience and appreciate the environmental, aesthetic, cultural, or natural point of interest including without limitation:

"(A) A geological monument;

"(B) A lake;

"(C) A mountain;

"(D) A park;

"(E) A river;

"(F) A species of animal abundant or unique to a particular area;

"(G) A species of bird abundant or unique to a particular area;

"(H) A species of insect abundant or unique to a particular area;

"(I) A wetland or aquatic resources area; and

"(J) An historic site;

"(4)(A) 'Geotourism-supporting business' means a business necessary to support a geotourism attraction by constructing, expanding or re-modeling a retail facility including without limitation, cultural or educational centers, indoor or outdoor plays or music shows, recreational or entertainment facilities, sport-

ing goods retail and rental establishments, guide services, transient lodging facilities including RV parks, arts and antique shops, campgrounds, bed and breakfasts, and dining establishments.

"(B) 'Geotourism-supporting business' does not include:

"(i) Facilities that are not open to the general public; or

"(ii) Facilities owned by the State of Arkansas or a political subdivision of the state.

"(5) 'Geotourism tax credit' means an tax credit against the income tax imposed by the Income Tax Act of 1929, § 26-51-101 et seq., or a credit against the premium taxes under §§ 26-57-603 — 26-57-605.

"(6) 'Geotourist' means a person who travels to an area to enjoy the area's natural habitats, heritage sites, scenic appeals, and local culture;

"(7) 'Holder' means the holder of a geotourism tax credit that is:

"(A) A person or entity subject to the income tax imposed by the Income Tax Act of 1929, § 26-51-101 et seq.; or

"(B) An insurance company paying an annual premium tax on its gross premium receipts under §§ 26-57-603 — 26-57-605.

"(8) 'Lower Mississippi River Delta' means a county in Arkansas or portion of a county in Arkansas whose land area includes an alluvial plain created by the Mississippi River; and

"(9) 'Person or entity' means a sole proprietorship, partnership, LLC, or corporation."

"(10) 'Tourism attraction' means the same as defined under A.C.A. § 15-11-503;

"(11) 'Tourism attraction project' means the same as defined under A.C.A. § 15-11-503; and

"(12) 'Tourism-supporting business' means a business that is open to the general public and provides goods or services necessary to support a tourism attraction and includes without limitation, restaurants, retail establishments, and lodging."

Acts 2007, No. 518, § 4, as amended by Acts 2009, No. 349, § 1, Acts 2009, No. 1192, § 1, and Acts 2011, No. 738, §§ 2 and 3, provided:

"Income tax credit for geotourism development.

"(a) To qualify for a geotourism tax credit, a person or entity shall invest a minimum of twenty-five thousand dollars (\$25,000) in a geotourism-supporting business located in the Lower Mississippi River Delta that is:

"(1) In an economically distressed area or a county that borders two (2) counties defined as economically distressed.

"(2) In an unincorporated area or a city with a population of less than sixteen-thousand (16,000) as determined by the U.S. Census Report of 2000;

"(3) Within thirty (30) miles of a national scenic byway;

"(4) Within fifteen (15) miles of:

"(A) Public access to a navigable river; or

"(B) An Arkansas State Park; or

"(C) An Arkansas State Game and Fish Commission Wildlife Management Area; or

"(D) A National Wildlife Refuge.

"(b)(1) A geotourism tax credit is equal to twenty-five percent (25%) of the amount of an investment described in subsection (a) of this Section 4.

"(2) For any tax year, the maximum amount of investment for a geotourism tax credit under this act is two hundred fifty thousand dollars (\$250,000)."

Acts 2007, No. 518, § 5, as amended by Acts 2009, No. 349, § 1, provided:

"Rules and regulations.

"(a) To claim a geotourism tax credit under Section 4 of this act, a person or entity shall submit evidence to the Department of Finance and Administration that:

"(1) The person or entity has made a minimum investment of twenty five thousand dollars (\$25,000); and

"(2) The investment is used to construct, expand, or remodel a geotourism-supporting business.

"(b) To claim a geotourism tax credit that has been transferred, sold, or assigned to another person or entity, the transferee, buyer, or assignee of the geotourism tax credit shall submit evidence to the Department of Finance and Administration that:

"(1) The person or entity has made a minimum investment of one hundred thousand dollars (\$100,000); and

"(2) The investment is used to construct, expand, or remodel a geotourism-supporting business, a tourism attraction, or tourism-supporting business project within the state but not within the Lower Mississippi River Delta.

"(c) If a geotourism tax credit is transferred, sold, or assigned to a person or entity that qualifies for a geotourism tax credit under Section 4 of this act, the minimum investment is twenty-five thousand dollars (\$25,000).

"(d) The Department of Finance and Administration shall promulgate rules necessary to implement this act.

"(e) The Department of Finance and Administration shall consult with the Arkansas Department of Parks and Tourism in promulgating rules under this act.

"(f) The Department of Finance and Administration and the Arkansas Department of Parks and Tourism may inspect facilities and records of a person or an entity requesting or receiving an income tax credit under this act as necessary to verify a claim."

Acts 2007, No. 518, § 6, as amended by Acts 2009, No. 349, § 1, provided:

"Use and transfer of credit.

"(a)(1) A holder may claim all or part of a geotourism tax credit for a taxable year up to an amount that is equal to, but that does not exceed, the amount of income tax or premium tax due by the holder.

"(2) If a holder does not use the total amount of the geotourism tax credit for a taxable year, a holder may carry forward any remainder of the geotourism tax credit.

"(3) A holder may carry forward any remainder of a geotourism tax credit for five (5) taxable years after the date of the original issuance of the geotourism tax credit or until the amount of the geotourism tax credit is exhausted, whichever occurs first.

"(b)(1) A holder may transfer, sell, or assign all or part of the geotourism tax credit to:

"(A) A person or entity that meets the criteria in Section 4 of this act; or

"(B) A person or entity that invests a minimum of one hundred thousand dollars (\$100,000) in any county for the purpose of constructing, expanding, or remodel-



eling a geotourism-supporting business, a tourism attraction, or tourism-supporting business project within the state.

"(2) A holder is not required to have any ownership or other interest in the investment for which a geotourism tax credit is claimed.

"(c)(1) If there is no executed agreement for an alternative distribution of a geotourism tax credit, a geotourism tax credit granted to a partnership, a limited liability company taxed as a partnership, an S-corporation, or multiple owners of property is passed through to the partners, members, or owners on a pro rata basis.

"(d) A holder that transfers, sells, or assigns all or part of a geotourism tax credit shall perfect the transfer, sale, or assignment by notifying the Department of Finance and Administration in writing within thirty (30) calendar days following the effective date of the transfer, sale, or assignment.

"(e)(1) Any consideration received for the transfer, sale, or assignment of the geotourism tax credit shall not be included as income taxable by the State of Arkansas.

"(2) Any consideration paid for the transfer, sale, or assignment of the geotourism tax credit shall not be deducted from income taxable by the State of Arkansas."

Acts 2007, No. 518, § 7, as amended by Acts 2009, No. 349, § 1, and Acts 2011, No. 738, § 4, provided:

"Expiration and effective date.

"(a) This act expires at the end of the 2021 tax year and is effective for income tax years beginning January 1, 2011."

Acts 2009, No. 349, § 1, omitted the phrase "under this act" from the introductory language of Acts 2007, No. 518, § 3(a). The Section 3 that the phrase was omitted from is now Section 4.

**Preambles.** Acts 1929, No. 118, contained a preamble which read: "Whereas, this State has been neglectful of its Wards in the Charitable Institutions, which is a disgrace to the people of a Great Commonwealth, and it is imperative that additional Revenue should be provided to correct the fearful conditions which now exist; and

"Whereas, an equalization Fund should be provided to give equal Educational op-

portunities to the Boys and Girls of our Rural Communities; and

"Whereas, Agricultural and Industrial development is now being retarded because of a policy to secure practically all of the Revenue from an Ad Valorem Tax, thus penalizing and discouraging ownership of property, while many who enjoy the benefits of Government and have large incomes, pay almost nothing to support the Government; Therefore...."

Acts 1961, No. 411 contained a preamble which read: "Whereas, corporations organized and existing under the laws of the State of Arkansas are required to pay income taxes to other states because of activities or presence of property therein; and

"Whereas, Arkansas corporations which have qualified to transact business in other states are, under present law, relieved from paying Arkansas income tax on income attributable to such other states, but corporations which have not qualified to transact business in other states, although subject to tax by such other states as to income attributable thereto, are required to pay Arkansas income tax on all their income, including income on which income tax is paid to such other states; and

"Whereas, it is the intention of the General Assembly to allow a credit to all persons, whether individuals, fiduciaries, partnerships or corporations, as to income derived from property located outside the State of Arkansas or from business transacted outside the State of Arkansas, where such person incurs liability for income tax to another state or territory...."

Acts 1967, No. 495, contained a preamble, which read: "Whereas, there are some mentally retarded children in this State who are cared for by a state institution without cost to such child's parents, and

"Whereas, some parents of mentally retarded children care for such children at home, thus relieving the State of the financial burden of caring for such children, and

"Whereas, the care of such mentally retarded children by the parents is costly and represents a substantial saving to the State of Arkansas in tax dollars...."

**Effective Dates.** Acts 1929, No. 118, § 44: approved Mar. 9, 1929. Emergency clause provided: "It is hereby ascertained

and declared that the Hospital for Nervous Diseases is inadequate to properly care for all who should be confined therein, to the end there are many persons of unsound mind at large, who are a menace to the public safety, and that said Hospital as now equipped is inadequate to restrain those insane persons who are confined therein, so that there is danger of their escaping at any time and imperil the safety of the public; that there are hundreds and hundreds of persons desiring to enter the Tuberculosis Sanitarium who cannot now be accommodated there, because that institution has neither room, beds nor facilities for additional people, as a result said consumptives at large are spreading the disease amongst their families and friends; that the funds to be raised by this Act will be used for the better care of the charitable wards of this State and to provide better for the rural schools of this State; and it is therefore ascertained and declared that it is necessary for the public peace, health and safety that this Act go into immediate operation, and accordingly it is provided that this act shall take effect and be in force from and after its passage."

Acts 1941, No. 129, § 8: approved Mar. 11, 1941. Emergency clause provided: "Because of the various social problems caused by the failure of the State to provide adequate relief for its aged citizens, and it appearing that there is a dire need for additional funds to meet the requirements of the Social Security Act and give additional revenue to this State and because the old folks in this State are suffering by reason of the failure of the State to secure funds with which to pay Old Age Pensions, and [an] emergency is hereby found to exist and is so declared by the Legislature of Arkansas; that this Act being necessary for the immediate preservation of the public peace, health and safety, shall be in full force and effect from and after its passage."

Acts 1943, No. 162, § 3: approved Mar. 4, 1943. Emergency clause provided: "It is ascertained and hereby declared that Arkansas residents are being prevented from engaging in business and owning property in other states because of double income taxation on the same income, and that for the same reason persons now residents of other states are prevented from becoming citizens and residents of

Arkansas, and that constitutes an emergency, and this Act, being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared, and this Act shall take effect and be in full force from and after its passage."

Acts 1947, No. 135, § 9: approved Mar. 3, 1947. Emergency clause provided: "It has been found and is hereby declared by the General Assembly of the State of Arkansas that existing laws providing for the distribution of state revenues are such that a moderate diminution of certain of the revenues would have the effect of curtailing the activities of certain necessary agencies of the State Government, and that only the provisions of this Act will correct a situation which otherwise may deprive the citizens of this State from receiving the benefits which the operation of the State Government contemplates. Therefore, an emergency is hereby declared to exist, and this act being necessary for the preservation of the public peace, health and safety shall take effect and be in full force from after its passage."

Acts 1951, No. 19, § 2, provided: "The provisions of this act shall apply to income earned on and after January 1, 1951."

Acts 1953, No. 320, § 3, provided that the provisions of this act shall be applicable to the tax years on and after January 1, 1953, as the term "tax year" is defined in § 26-51-102.

Acts 1953, No. 320, § 4: approved Mar. 26, 1953. Emergency clause provided: "It is found by the General Assembly of this State that under the existing income tax law that persons owning and operating real estate located outside the State of Arkansas are not required to account for the income on said real estate in their Arkansas Income Tax Returns, but that they are permitted under the present law to take deductions by reason of expenditures and losses on said real estate and that by such method the State of Arkansas is being defeated of its just portion of taxes due this State. Therefore, an emergency is hereby declared to exist, and this Act being necessary for the preservation of the public peace, health and safety, shall take effect and be in full force from and after its passage."

Acts 1961, No. 411, § 2: effective for all taxable years ending Sept. 30, 1961 and thereafter.



Acts 1968 (2nd Ex. Sess.), No. 7, § 4: Jan. 1, 1968. Emergency clause provided: "It is hereby found and determined by the General Assembly that the present definition in the Arkansas Income Tax Law as to what constitutes a "dependent" for the purposes of allowing a tax credit is unclear and unduly hampers the efficient administration of the Income Tax Laws of this State; that by such ambiguity creates an inequity in the administration of such laws; and that in order to clarify the definition of who constitutes a "dependent" for income tax credit purposes and to remedy this situation, it is necessary that this Act become effective immediately. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall become effective and be in full force and effect from and after January 1, 1968."

Acts 1969, No. 75, § 3: Feb. 20, 1969. Emergency clause provided: "It is hereby found and determined by the General Assembly that Act 413 of 1961, as amended, The Uniform Division of Income for Tax Purposes Act, provides for the apportionment of net income of multi-state transactions for income tax purposes; that in order to more efficiently administer the income tax laws of this State and to insure that Arkansas receives its fair share of income taxes from such transactions, it is necessary that this Act become effective immediately. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in effect from and after its passage and approval."

Acts 1969, No. 219, § 4: provisions of act applicable to 1969 income upon which the tax is paid in 1970.

Acts 1975, No. 994, § 2, provided: "The provisions of this act shall be effective in regard to income tax returns filed in 1976, with respect to income earned in 1975, and thereafter."

Acts 1977, No. 629, § 3: Dec. 31, 1976.

Acts 1977, No. 734, § 4: Mar. 24, 1977. Emergency clause provided: "It is hereby found and determined by the General Assembly that many taxpayers are unable to take a legitimate dependent care deduction if they file separately, and that this is an arbitrary and unreasonable distinction which will be repealed by this Act. There-

fore, an emergency is hereby declared to exist, and this Act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1979, No. 420, § 3: Mar. 20, 1979. Emergency clause provided: "It is hereby found and determined by the General Assembly that the present definition of deaf persons is erroneous and this Act is immediately necessary to correct such error. Therefore, an emergency is hereby declared to exist and this Act being immediately necessary for the preservation of the public peace, health and safety, shall be in full force and effect from and after its passage and approval."

Acts 1983, No. 379, § 27: Dec. 31, 1982. Emergency clause provided: "It is hereby found and determined by the General Assembly that certain provisions of the State's income and estate tax laws that have counterparts in the Federal tax laws do not coincide with recent amendments and changes to the Federal tax laws; and that this Act is immediately necessary to make the Arkansas tax laws conform with the Federal tax laws to clarify any possible question of confusion caused by such differences. Therefore, an emergency is hereby declared to exist and this Act being immediately necessary for the preservation of the public, peace, health and safety shall be in full force and effect for all income years after, or estate tax return filing dates coming after, December 31, 1982."

Acts 1983, No. 506, § 2, provided that this act shall apply to tax years beginning after January 1, 1983.

Acts 1983, No. 785, § 8: Mar. 24, 1983. Emergency clause provided: "It is hereby found and determined by the General Assembly that the current level of employment is unacceptable; and that it is incumbent upon the General Assembly to provide an economic climate conducive to the creation of jobs for the citizens of this State; and that the tax credit provided by this Act could serve as a stimulus for businesses to create needed job opportunities. Therefore, an emergency is declared to exist and this Act, being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."



Acts 1987, No. 382, § 34: Mar. 24, 1987. Emergency clause provided: "It is hereby found and determined by the General Assembly of the State of Arkansas that the federal government has recently made major changes in the federal income tax law; that for simplicity of administration and equity various provisions of the federal law should be adopted for Arkansas Income Tax purposes; and that for the effective administration of this Act, the Act should become effective immediately. Therefore an emergency is hereby declared to exist and this Act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1989, No. 826, § 36, provided that the provisions of that act shall be in full force and effect for all income years beginning on or after January 1, 1989.

Acts 1991, No. 172, § 5; effective beginning with returns for the 1991 income year.

Acts 1991, No. 748, § 1, provided: "This section shall apply to purchases of waste reduction, reuse, or recycling equipment made after January 1, 1991".

Acts 1993, No. 654, § 5: Mar. 24, 1993. Emergency clause provided: "It is hereby found and determined by the General Assembly of the State of Arkansas that clarification of the law for the tax credit for waste reduction, reuse, or recycling equipment is necessary; that the use of Arkansas post-consumer waste should be encouraged by means of this credit; that the credit should be refunded or disallowed under certain circumstances; and that for the effective administration of this act, the act should become effective immediately. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1993, No. 721, § 2 and No. 785, § 20, provide that the 1993 amendments are effective for taxable years beginning on and after January 1, 1993.

Acts 1993, No. 785, § 24: Mar. 30, 1993. Emergency clause provided: "It is hereby found and determined that certain changes are necessary to the Arkansas income tax laws; that these changes are necessary immediately in order to main-

tain the efficient administration of the Arkansas income tax laws; and that this act is necessary to effectuate that purpose. Therefore, an emergency is hereby declared to exist and this act being necessary for the preservation of public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1993, No. 785, § 20: amendments to subchapters 1, 4, 5, 9, and 10 effective for taxable years beginning on and after January 1, 1993.

Acts 1993, Nos. 820 and 987, § 9: Apr. 1, 1993, and April 9, 1993, respectively. Emergency clause provided: "It is hereby found and determined by the General Assembly of this state that unemployment and economic underdevelopment has reached intolerable levels in certain portions of this state and the state as a whole has been unable to compete with other state's incentive programs for economic development, and, that the incentives afforded by this Act are critical to the development and expansion of job opportunities in the state. Therefore, an emergency is declared to exist and this act, being necessary for the preservation of the public peace, health and safety, shall be in full force and effect from and after its passage and approval."

Acts 1995, No. 850, § 8: effective for taxable years beginning January 1, 1995.

Acts 1995, No. 850, § 12: Mar. 31, 1995. Emergency clause provided: "It is hereby found and determined by the General Assembly that the State of Arkansas is in serious need to provide for the health, welfare and education of the State's children by encouraging child care facilities to offer an "appropriate early childhood program" and this Act is designed to meet that need by providing tax incentives to encourage construction of these facilities. Therefore, an emergency is hereby declared to exist and this act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1995, No. 1103, § 4 also provided, in part: "The tax credit provided by this act shall apply to taxable years beginning January 1, 1996 and all taxable years thereafter."

Acts 1997, No. 328, § 11, provided: "This Act shall be effective on and after

November 15, 1998 unless a constitutional amendment or initiated act shall be approved or an act of the General Assembly shall become law before that date which exempts food, either wholly or partially, from the Arkansas gross receipts tax. If a constitutional amendment, initiated act, or act of the General Assembly exempting food is not approved, then the provisions of Section 1, 2, 3, 4, 6, 7, and 8 of this Act shall be effective for tax years beginning on and after January 1, 1998; the provisions of Section 5 of this Act shall be effective as provided in that section; and the provisions of Section 9 of this Act shall be effective as provided in Section 10."

Acts 1997, No. 951, § 34, provided "Sections 1 through 24, 32 and 33 shall be effective for tax years beginning on and after January 1, 1997. However, it is the intent of this Act that those portions of the Internal Revenue Code adopted by this Act which for federal tax purposes do not become effective until some time after January 1, 1997, shall also not become effective for state tax purposes until the same time."

Acts 1997, No. 951, § 38: March 31, 1997. Emergency clause provided: "It is hereby found and determined by the General Assembly that current state tax laws are unclear or confusing, creating difficulty for taxpayers seeking to comply with these tax laws; that the changes made by Sections 25 through 31 of this bill are necessary to provide adequate direction to those taxpayers and to maintain the efficient administration of the Arkansas tax laws; and that the provisions of Sections 25 through 31 of this Act are necessary to effectuate that purpose. Therefore, an emergency is hereby declared to exist and the provisions of Sections 25 through 31 of this Act being necessary for the preservation of the public peace, health, and safety shall become effective on the date of its

approval by the Governor. If the bill is neither approved nor vetoed by the Governor, Sections 25 through 31 shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, Sections 25 through 31 shall become effective on the date the last house overrides the veto."

Acts 2001, No. 773, § 12: effective for tax years beginning on and after January 1, 2001.

Acts 2003, No. 663, § 14: effective for tax years beginning on and after January 1, 2003.

Acts 2003, No. 993, § 2: effective for tax years beginning on or after January 1, 2003.

Acts 2003, No. 1724, § 2: effective for tax years beginning on or after January 1, 2003.

Acts 2005, No. 675, § 17: effective for tax years beginning on or after January 1, 2005.

Acts 2005, No. 2247, § 2: effective for tax years beginning on or after January 1, 2006.

Acts 2009, No. 237, § 2: effective for tax years beginning on or after January 1, 2009.

Acts 2009, No. 498, § 4, provided: "This act is effective for tax years beginning on and after January 1, 2009, and ending on or before December 31, 2015."

Acts 2011, No. 787, § 36, provided: "Subdivision (14)(B) of Section 12, subdivision (a)(1)(B) of Section 16, Section 17, Section 20, and Section 35 shall be effective for tax years beginning on and after January 1, 2010. Sections 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, subdivision (14)(A) of Section 12, Sections 13, 14, 15, subdivisions (a)(1)(A) and (a)(2) of Section 16, Sections 18, 19, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, and 34 shall be effective for tax years beginning on and after January 1, 2011."

## RESEARCH REFERENCES

**Am. Jur.** 71 *Am. Jur. 2d*, *State Tax*, § 549 et seq.

**Ark. L. Rev.** *Income Tax Amendments*, 5 *Ark. L. Rev.* 371.

**U. Ark. Little Rock L.J.** *Survey of Arkansas Law, Taxation*, 1 *U. Ark. Little Rock L.J.* 258.

**26-51-501. Personal tax credits.**

(a) There shall be deducted from the tax after the tax shall have been computed as set forth in the Income Tax Act of 1929 a personal tax credit as follows:

(1)(A) For a single individual, the adjusted individual credit.

(B) However, a taxpayer who was blind or deaf at any time during the income year shall be entitled to an additional tax credit of twenty dollars (\$20.00).

(C) A single individual who is deaf-blind shall be entitled to an additional tax credit of forty dollars (\$40.00).

(D) A single individual of sixty-five (65) years of age or older shall be entitled to an additional tax credit of twenty dollars (\$20.00);

(2)(A)(i)(a) For the head of household, surviving spouse, or a married individual living with husband or wife, the adjusted joint credit.

(b) A husband and wife living together and filing either jointly or separately on the same income tax form shall receive only one (1) adjusted joint credit against their aggregate tax.

(ii) Subdivision (a)(2)(A)(i) of this section shall apply if the Director of the Department of Finance and Administration continues to provide a tax return on which a husband and wife can elect to file jointly or separately on the same return.

(B) However, in the event that the husband or wife shall be sixty-five (65) years of age or older, each of them who is sixty-five (65) years of age or older shall be entitled to an additional tax credit of twenty dollars (\$20.00).

(C) However, any husband or wife filing a separate return on a separate tax form shall receive the adjusted individual credit on each return so filed, but if the husband or wife is sixty-five (65) years of age or older, each of them who is sixty-five (65) years of age or older shall be entitled to an additional tax credit of twenty dollars (\$20.00).

(D) "Head of household" means the same as defined in 26 U.S.C. § 2(b), as in effect on January 1, 2001.

(E) "Surviving spouse" means the same as defined in 26 U.S.C. § 2(a), as in effect on January 1, 2001;

(3)(A) For each individual, other than husband or wife, who has a gross income for the tax year of less than three thousand dollars (\$3,000), who has not filed a joint return with his or her spouse for the taxable year, and who is dependent upon and receives his or her chief support from the taxpayer, the adjusted individual credit.

(B)(i) As used in subdivision (a)(3)(A) of this section, "dependent" means the same as defined in 26 U.S.C. § 152, as in effect on January 1, 2005.

(ii) "Dependent" does not include any individual who is a citizen or subject of a foreign country unless that individual is a resident of the United States or a country contiguous to the United States.

(C)(i) As used in subdivision (a)(3)(B) of this section, "brother" and "sister" include a brother or sister by half blood.



(ii) For the purpose of determining whether any of the foregoing relationships exist, a legally adopted child of a person shall be considered a child of that person by blood;

(4) In the case of a fiduciary:

(A) If taxable under § 26-51-203(a)(1), the adjusted individual credit;

(B) If taxable under § 26-51-203(a)(2), the same tax credit as would be allowed the deceased if living;

(C) If taxable under § 26-51-203(a)(3), the tax credit to which the beneficiary would be entitled; and

(5) In the case of a nonresident taxpayer, the taxpayer shall be entitled to that proportion of the tax credit granted by the Income Tax Act of 1929 that the gross income within the state bears to the entire gross income wherever earned.

(b)(1) The status of the last day of the income year shall determine the right to the tax credits provided in this section.

(2) However, a taxpayer shall be entitled to tax credits for a husband or wife or a dependent who has died during the income year.

(c)(1) As used in this section, "blind person" means any person:

(A) Who is totally blind, cannot tell light from darkness;

(B) A person whose central visual acuity does not exceed 20/200 in the better eye with correcting lenses; or

(C) Whose fields of vision are so limited that the widest diameter of the visual field subtends an angle no greater than twenty degrees (20°).

(2) For the purposes of subdivision (a)(1) of this section:

(A) An individual is deaf only if his or her average loss in the speech frequencies which are five hundred hertz (500 Hz) to two thousand hertz (2,000 HZ) in the better ear is eighty-six decibels (86 dB), International Organization for Standardization (ISO), or worse; and

(B) An individual is deaf-blind only if he or she is both deaf and blind.

(d) For the purposes of this section:

(1) "Adjusted individual credit" shall be twenty dollars (\$20.00); and

(2) "Adjusted joint credit" shall be forty dollars (\$40.00).

(e)(1)(A) Not later than July 15 of each calendar year, the Director of the Department of Finance and Administration shall increase the adjusted individual credit and adjusted joint credit by the cost-of-living adjustment for that current calendar year, rounding each amount to the nearest dollar.

(B) The annual cost-of-living adjustment shall apply to the adjusted credits as contained in subdivisions (d)(1) and (2) of this section.

(2)(A) For purposes of subdivision (e)(1) of this section, the cost-of-living adjustment for any calendar year is the percentage, if any, by which the Consumer Price Index for the calendar year preceding the taxable year exceeds the Consumer Price Index for the calendar year 2001.

(B) The Consumer Price Index for any calendar year is the average of the Consumer Price Index as of the close of the twelve-month period ending on August 31 of that calendar year.

(C) As used in this subsection, "Consumer Price Index" means the last Consumer Price Index for All Urban Consumers published by the United States Department of Labor.

(3) The adjusted credit amounts shall apply for tax years beginning on and after January 1, 2003.

(4) The director shall not increase the adjusted credit for any calendar year unless the conditions of subsection (f) of this section are met.

(f) The adjusted credit applicable for any calendar year shall not be increased unless:

(1) The net available general revenue forecast provided to the Joint Committee on Economic and Tax Policy pursuant to § 10-3-1404 in May of the calendar year for which a credit increase is contemplated indicates that net available general revenue growth for the fiscal year beginning in the calendar year for which a credit increase is contemplated will be four and two-tenths percent (4.2%) or greater; and

(2) Either:

(A) The net available general revenues for the fiscal year ending in the calendar year for which a credit increase is contemplated exceed the official forecast by at least five-tenths of one percent (0.5%); or

(B) The net available general revenues for the fiscal year ending in the calendar year for which a credit increase is contemplated exceed the total distributions for that fiscal year under the provisions of the Revenue Stabilization Law, § 19-5-101 et seq.

(g) Title 26 U.S.C. § 151(c)(6) as in effect on January 1, 2003, regarding the tax treatment of kidnapped children, is adopted for the purpose of computing Arkansas income tax liability.

**History.** Acts 1929, No. 118, Art. 3, § 16; Pope's Dig., § 14039; Acts 1941, No. 129, § 1; 1947, No. 135, § 4; 1951, No. 19, § 1; 1957, No. 20, § 2; 1968 (2nd Ex. Sess.), No. 7, § 1; 1969, No. 219, §§ 1, 3; 1969, No. 243, § 1; 1975, No. 994, § 1; 1977, No. 629, §§ 1, 2; 1979, No. 420, § 1; 1983, No. 506, § 1; A.S.A. 1947, §§ 84-2021, 84-2021a, 84-2021.3; Acts 1987, No. 382, § 24; 1993, No. 785, §§ 11, 12; 2001, No. 1819, § 1; 2003, No. 663, § 12; 2005, No. 675, § 14.

**A.C.R.C. Notes.** As enacted by Acts 2001, No. 1819, § 1, subdivision (e)(1)(A) of this section began: "Not later than July 15 of calendar year 2003, and of each subsequent calendar year,".

As enacted by Acts 2001, No. 1819, § 1, subsection (f) of this section began: "The adjusted credit applicable for any calendar year beginning on and after January

1, 2003, shall not be increased unless:".

**Publisher's Notes.** Acts 1987, No. 382, § 1, provided: "This act shall be known and may be cited as the 'Income Tax Act of 1987.'"

Acts 1987, No. 382, § 2, provided that the purpose of this act is to make technical amendments to the Income Tax Act of 1929, Acts 1929, No. 118, as amended, and to the Arkansas Tax Procedure Act, Acts 1979, No. 401, as amended, to make the Arkansas income tax and tax procedure statutes conform to several recent amendments to their counterparts in the federal income statutes, to eliminate procedural problems that have arisen since the enactment of these acts, and for other purposes.

Acts 1987, No. 382, § 32(e), provided that all other laws and parts of laws in conflict with this act are repealed for in-

come years beginning on and after January 1, 1987.

Acts 1987, No. 382, § 33, provided that, except as provided in § 26-18-303(a)(2)(B) and (c), regarding confidentiality of tax returns and other tax information, which shall apply retroactively to any pending suit, action, or prosecution, administrative or judicial, for which no final judg-

ment has been rendered by a court of competent jurisdiction and all future suits, actions, and prosecutions, the provisions of this act shall apply to income years beginning on and after January 1, 1987.

**Meaning of "Income Tax Act of 1929".** See note to § 26-51-101.

## RESEARCH REFERENCES

**U. Ark. Little Rock L. Rev.** Survey of Legislation, 2003 Arkansas General Assembly, Education Law, Income Tax Com-

putation, 26 U. Ark. Little Rock L. Rev. 381.

## CASE NOTES

### ANALYSIS

In General.

Applicability.

Aggregate Net Income.

Nonresidents.

### In General.

Administrative rule held void as an attempt to amend this section. State ex rel. Att'y Gen. v. Burnett, 200 Ark. 655, 140 S.W.2d 673 (1940).

### Applicability.

This section applies to both residents and nonresidents without discrimination between them, but deals only with incomes derived from property or business conducted in Arkansas and has no relation whatever to incomes derived by non-

residents from sources outside the state. State ex rel. Att'y Gen. v. Burnett, 200 Ark. 655, 140 S.W.2d 673 (1940).

### Aggregate Net Income.

Aggregate net income as used in this section has relation to the aggregate net income of husband and wife living together derived from property in the state or from business carried on in the state. State ex rel. Att'y Gen. v. Burnett, 200 Ark. 655, 140 S.W.2d 673 (1940).

### Nonresidents.

Net income of nonresident taxpayer's spouse derived from sources outside the state should not be taken into account in allowing exemptions. State ex rel. Att'y Gen. v. Burnett, 200 Ark. 655, 140 S.W.2d 673 (1940).

## 26-51-502. Household and dependent care services.

(a) A credit shall be allowed to individuals against the income tax imposed by the Income Tax Act of 1929, § 26-51-101 et seq., for expenses for household and dependent care services necessary for gainful employment in the manner prescribed by subsection (b) of this section.

(b)(1) Title 26 U.S.C. § 21, as in effect on January 1, 2011, is adopted for purposes of determining the allowable credit under the Income Tax Act of 1929, § 26-51-101 et seq., for household and dependent care services necessary for gainful employment.

(2) The amount of credit shall be twenty percent (20%) of the federal credit allowable.

(c)(1)(A)(i) A credit, which is equal to twenty percent (20%) of the federal child care credit as allowed under Title 26 U.S.C. § 21, as in effect on January 1, 1993, shall be allowed to qualified individuals



against the income tax imposed by the Income Tax Act of 1929, § 26-51-101 et seq.

(ii) The twenty percent (20%) child care credit is refundable.

(iii) The excess of the credit over tax liability will be returned to the taxpayer as an overpayment of tax.

(B) "Qualified individual" means a taxpayer who has a dependent child with respect to whom the taxpayer is entitled to a credit under § 26-51-501(a)(3), and who incurs child care expenses necessary for gainful employment at an approved child care facility, as defined in subdivision (c)(1)(C) of this section.

(C) "Approved child care facility" means a child care facility which provided an appropriate early childhood program, as defined in § 6-45-103, and which is approved in accordance with § 6-45-109.

(2) A taxpayer cannot claim both the credit allowed in subsections (a) and (b) of this section and the credit allowed in subsection (c) of this section.

(3) The credit allowed in this subsection shall be effective for taxable years beginning January 1, 1993.

**History.** Acts 1973, No. 490, §§ 1, 2; § 13; 2005, No. 675, § 15; 2007, No. 218, 1977, No. 734, §§ 1, 2; 1983, No. 379, § 34; 2011, No. 787, § 33.  
 § 15; A.S.A. 1947, §§ 84-2088, 84-2089; **Amendments.** The 2011 amendment substituted "January 1, 2011" for "January 1, 2007" in (b)(1).  
 Acts 1993, No. 1268, § 1; 1997, No. 328, § 6; 1997, No. 951, § 1; 2003, No. 663,

## RESEARCH REFERENCES

**U. Ark. Little Rock L. Rev.** Survey of Legislation, 2003 Arkansas General Assembly, Education Law, Income Tax Computation, 26 U. Ark. Little Rock L. Rev. 381.

### 26-51-503. Support of a child with a developmental disability.

(a) In addition to the state income tax credit permitted by § 26-51-501(a) and (b), any taxpayer in this state who is maintaining, supporting, and caring for an individual with a diagnosis of a developmental disability in the taxpayer's home is permitted, in addition to all other income tax credits, a credit of five hundred dollars (\$500) for each income year for that individual.

(b)(1) Any person wishing to take advantage of this tax credit must have certification by a licensed physician, licensed psychologist, or licensed psychological examiner that the individual has a diagnosis of a developmental disability.

(2) The certification shall be valid for five (5) years for income tax purposes.

(3) If any person wishes to take advantage of this tax credit after using the certification for five (5) income years, the person must have the individual reevaluated by a licensed physician, licensed psychologist, or licensed psychological examiner for recertification.

(4) The recertification process shall be valid for another five (5) years for income tax purposes.

(c) As used in this section:

(1) "Diagnosis of a developmental disability" means a disability of a person that:

(A) Is attributable to:

(i) An intellectual disability, cerebral palsy, epilepsy, spina bifida, Down syndrome, or autism;

(ii) Another condition of the person found to be closely related to an intellectual disability because the condition results in an impairment of general intellectual functioning or adaptive behavior similar to that of a person with an intellectual disability or requires treatment and services similar to that required for a person with an intellectual disability; or

(iii) Dyslexia resulting from a disability or condition described in subdivision (c)(1)(A)(i) or (c)(1)(A)(ii) of this section;

(B) Originates before the person reaches twenty-two (22) years of age;

(C) Has continued or can be expected to continue indefinitely; and

(D) Constitutes a substantial handicap to the person's ability to function without appropriate support services, including without limitation:

(i) Planned recreational activities;

(ii) Medical services such as physical therapy and speech therapy; and

(iii) Possibilities for sheltered employment or job training; and

(2) "Individual" means a child of the taxpayer's blood, an adopted child, or a dependent within the meaning of § 26-51-501(a)(3)(B).

**History.** Acts 1967, No. 495, §§ 1, 2; 1977, No. 833, § 1; 1983, No. 523, § 1; A.S.A. 1947, §§ 84-2021.1, 84-2021.2; Acts 1999, No. 417, § 1; 2009, No. 237, § 1; 2011, No. 68, § 5.

**Amendments.** The 2009 amendment rewrote subdivision (c)(1).

The 2011 amendment inserted "spina bifida, Down syndrome" in (c)(1)(A)(i).

## **26-51-504. Income from sources outside Arkansas.**

(a)(1) For the purpose of ascertaining the income tax due by an individual resident of Arkansas whose gross income includes income derived from property located outside the State of Arkansas, or from business transacted outside the State of Arkansas, the tax shall first be computed as if all of the income of the resident were derived from sources within the State of Arkansas, but a credit shall then be given on the tax as so computed, for the amount of income tax actually owed by the resident for the year to any other state or territory on account of income from property owned or business transacted in the other state or territory. However, credit shall not exceed what the tax would be on the outside income, if added to the Arkansas income, and calculated at Arkansas income tax rates.

(2)(A) For purposes of subdivision (a)(1) of this section, the amount of income tax owed to any other state or territory by a resident shareholder of an S corporation shall be considered to include an

amount equal to the shareholder's pro rata share of any net income tax owed by the S corporation to a state which does not recognize S corporations.

(B) As used in subdivision (a)(2)(A) of this section, "net income tax" means any tax imposed on or measured by a corporation's net income.

(b) Before a resident of Arkansas may claim the credit allowed under this section, he or she shall file with his or her income tax return any such additional information as the Director of the State Income Tax Division or the Director of the Department of Finance and Administration may by regulation require showing in detail the amount of gross and net income derived from property owned or business transacted without this state, together with the amount of tax actually owed on the income to another state or territory.

(c) The credit against Arkansas income tax afforded individual residents of Arkansas under this section shall also be available to fiduciaries and partnerships residing or domiciled in Arkansas which are subject to Arkansas income tax or which have to report income for purposes of Arkansas income tax.

**History.** Acts 1943, No. 162, §§ 1, 2; 1953, No. 320, § 1; 1961, No. 411, § 1; 1969, No. 75, § 1; A.S.A. 1947, §§ 84-2017, 84-2018, 84-2018.1; Acts 1989, No. 826, § 6; 1993, No. 721, § 1; 1993, No. 785, § 13.

**Publisher's Notes.** Acts 1989, No. 826, § 1, provided that this act shall be known and may be cited as the "Arkansas Income Tax Technical Revenue Act of 1989".

**Cross References.** Federal Subchapter S adopted, § 26-51-409.

## RESEARCH REFERENCES

**Ark. L. Rev.** Conflict of Laws: Arkansas, 32 Ark. L. Rev. 1.

## CASE NOTES

### ANALYSIS

Constitutionality.  
Deductions.

#### Constitutionality.

Even if this section would be unconstitutional because of subsection (b), the power to tax the income of an Arkansas resident derived from without the state under Acts 1929, No. 118 would not be destroyed. *Morgan v. Cook*, 211 Ark. 755, 202 S.W.2d 355 (1947).

#### Deductions.

This section was concerned with income and not deductions, and therefore, person

drilling for oil in another state was entitled to claim as deductions the amount expended in drilling a "dry hole." *Morley v. Pitts*, 217 Ark. 755, 233 S.W.2d 539 (1950) (decision prior to 1953 amendment).

Losses paid under contract to nonresidents for oil operations in another state were deductible from taxable income in conformance with holdings prior to statutory amendment where the taxpayer was not the owner of the real estate involved. *Scurlock v. Sherman*, 224 Ark. 750, 276 S.W.2d 52 (1955).

**Cited:** *Collins v. Skelton*, 256 Ark. 955, 512 S.W.2d 542 (1974).



**26-51-505. Establishment or expansion of manufacturing enterprise.**

(a) There shall be allowed a credit against the tax imposed by the Income Tax Act of 1929 § 26-51-101 et seq., § 26-51-205, and § 26-51-303, an amount as determined in subsection (c) of this section, for any taxpayer who establishes or expands a manufacturing enterprise in the State of Arkansas which results in the creation of new additional full-time or part-time jobs within this state.

(b)(1) As used in this section, "manufacturing" refers to and includes those operations commonly understood within their ordinary meaning and shall also include mining, quarrying, refining, extracting oil and gas, cotton ginning, the drying of rice, soybeans, and other grains, the manufacturing of feed, processing of poultry or eggs and livestock, and the hatching of poultry.

(2)(A) A "new employee" shall be a person residing and domiciled in this state, hired by the taxpayer to fill a new additional job in this state which previously did not exist in the manufacturing enterprise during the taxable year for which the credit allowed by this section is claimed.

(B) To qualify for the credit provided in this section, the employment of a new employee by the manufacturer must increase the total number of employees who are employed by the manufacturer. In no case shall the new employees allowed for the purpose of the credit exceed the total increase in employment.

(C) A person shall be deemed to be so engaged if that person performs duties in connection with the operation of the business enterprise on:

(i) A regular full-time basis; or

(ii) A part-time basis if the person is customarily performing such duties at least twenty (20) hours per week for at least six (6) months during the taxable year.

(c)(1) The credit shall be a portion of the state individual or corporate income tax paid by the taxpayer but not in excess of fifty percent (50%) of the tax. The portion shall be an amount determined by multiplying the number of new employees, as defined in subdivision (b)(2) of this section, by one hundred dollars (\$100) per eligible new employee per taxable year.

(2) The amount of the credit allowed under subdivision (c)(1) of this section for the taxable year shall be an amount equal to the sum of:

(A) A carryover of prior unused credits arising from the taxable years beginning on or after January 1, 1983, carried to the taxable year; plus

(B) The amount of the credit allowed by subdivision (c)(1) of this section for the taxable year.

(3) If the sum of the amount of the credits under subdivisions (c)(2)(A) and (B) of this section for the taxable year exceeds the limitation imposed by subdivision (c)(1) of this section, the excess shall

be treated as a carryover credit and may be carried over for a maximum of three (3) consecutive years following the taxable year in which the credit originated.

(d)(1) In the case of a proprietorship or partnership, the amount of the credit determined under this section for any taxable year shall be apportioned to each proprietor or partner in proportion to the amount of income from the manufacturing entity which the proprietor or partner is required to include in his or her gross income.

(2) In the case of a Subchapter S corporation, as allowed by § 26-51-409, the amount of the credit determined under this section for any taxable year shall be apportioned pro rata among the persons who are shareholders of the corporation on the last day of the taxable year.

(3) No credit shall be allowed under this section to any organization which is exempt from state income tax.

(4) In the case of an estate or trust:

(A) The amount of the credit determined under this section for any taxable year shall be apportioned between the estate or trust and the beneficiaries on the basis of the income of the estate or trust allocable to each; and

(B) Any beneficiary to whom any amount has been apportioned under subdivision (d)(4)(A) of this section shall be allowed, subject to the limitations contained in this section, a credit under this section for the amount.

(e)(1) The Revenue Division of the Department of Finance and Administration shall promulgate such rules and regulations as may be deemed necessary to carry out the purposes of this section.

(2) The division shall consult with the Department of Workforce Services and the Arkansas Economic Development Council during the promulgation of the rules and regulations.

(f) The tax credit provided by this section shall expire on June 30, 1988. Any unused credits may be carried over beyond this date in accordance with subdivision (c)(3) of this section.

**History.** Acts 1983, No. 785, §§ 1-6;  
A.S.A. 1947, §§ 84-2021.18 — 84-2021.23;  
Acts 1997, No. 540, § 54.

## RESEARCH REFERENCES

**U. Ark. Little Rock L.J.** Legislation of the 1983 General Assembly, Taxation, 6 U. Ark. Little Rock L.J. 636.

### **26-51-506. Tax credit for waste reduction, reuse, or recycling equipment — Eligibility.**

(a) The intent and purpose of this section is to increase capacity in the State of Arkansas for the use of recovered materials.

(b) As used in this section:

(1) "Cost", in the case of a transfer of title or a finance lease, means the amount of the purchase price, and, in the case of a lease which is not a finance lease but which otherwise qualifies as a purchase under this section, means the amount of the lease payments due to be paid during the term of the lease after deducting any portion of the lease payments attributable to interest, insurance, and taxes;

(2) "Equipment to service waste reduction, reuse, or recycling equipment" means expenditures, machinery, or equipment that keeps existing machinery or equipment in running order by providing repair, maintenance, adjustment, inspection, or supplies;

(3) "Finance lease" means a lease agreement which is treated as a purchase by a lessee for Arkansas income tax purposes;

(4) "Home scrap" means materials or by-products generated from and commonly reused within an original manufacturing process;

(5) "Maintenance" means expenditures, machinery, or equipment used to keep existing machinery or equipment in a condition that approaches or equates to its original condition;

(6) "Motor vehicle" means a vehicle or trailer that is licensed, or that normally would be licensed, for use on highways in Arkansas;

(7) "Postconsumer waste" means products or other materials generated by a business, governmental entity, or consumer which have served their intended end use and have been recovered from or otherwise diverted from the solid waste stream for the purpose of recycling;

(8) "Preconsumer material" means material generated during any step in the production of a product and recovered or otherwise diverted from the solid waste stream for the purpose of recycling but does not include home scrap;

(9) "Purchase" means a transaction under which title to an item is transferred for consideration or a lease contract for a period of at least three (3) years regardless of whether title to the item is transferred at the end of such period;

(10) "Recovered materials" means those materials which have been separated, diverted, or removed from the waste stream for the purpose of recycling and includes preconsumer material and postconsumer waste but not home scrap;

(11) "Recycling" means the systematic collecting, sorting, decontaminating, and returning of waste materials to commerce as commodities for use or exchange;

(12) "Repair" means expenditures, machinery, or equipment used to restore existing machinery or equipment to its original or similar condition and capacity after damage or after deterioration from use;

(13) "Solid waste" means all putrescible and nonputrescible wastes in solid or semisolid form, including, but not limited to, yard or food waste, waste glass, waste metals, waste plastics, wastepapers, waste paperboard, and all other solid or semisolid wastes resulting from industrial, commercial, agricultural, community, and residential activities; and



(14)(A)(i) "Waste reduction, reuse, or recycling equipment" means new or used machinery or equipment located in Arkansas on the last day of the taxable year which is operated or used exclusively in Arkansas to collect, separate, process, modify, convert, or treat solid waste so that the resulting product may be used as a raw material or for productive use or to manufacture products containing recovered materials.

(ii) "Waste reduction, reuse, or recycling equipment" also includes devices which are directly connected with or are an integral and necessary part of such machinery or equipment and are necessary for such collection, separation, processing, modification, conversion, treatment, or manufacturing.

(B) "Waste reduction, reuse, or recycling equipment" does not include motor vehicles.

(c) There shall be allowed a credit against the tax imposed by the Income Tax Act of 1929, § 26-51-101 et seq., in an amount as determined in subsection (e) of this section for any taxpayer engaged in the business of reducing, reusing, or recycling solid waste for commercial purposes who purchases waste reduction, reuse, or recycling equipment used exclusively for the purpose of reducing, reusing, or recycling solid waste.

(d) To claim the benefits of this section, a taxpayer must obtain a certification from the Director of the Arkansas Department of Environmental Quality certifying to the Revenue Division of the Department of Finance and Administration that:

(1) The taxpayer is engaged in the business of reducing, reusing, or recycling solid waste material for commercial purposes, whether or not for profit;

(2) The machinery or equipment purchased is waste reduction, reuse, or recycling equipment;

(3) The machinery or equipment is being used in the collection, separation, processing, modification, conversion, treatment, or manufacturing of products containing at least fifty percent (50%) recovered materials, provided that at least ten percent (10%) of the recovered materials shall be post-consumer waste; and

(4) The taxpayer has filed a statement with the director acknowledging that the taxpayer will make a good faith effort to utilize post-consumer waste generated in Arkansas as at least ten percent (10%) of the post-consumer waste being used in the equipment, to the extent available at a competitive price.

(e)(1) The amount of the credit allowed under subsection (c) of this section shall be equal to thirty percent (30%) of the cost of waste reduction, reuse, or recycling equipment, including the cost of installation.

(2) The cost of installation shall not include the cost of:

(A) Feasibility studies;

(B) Engineering costs of a building to house the equipment and related machinery; or

(C) Equipment used to service the waste reduction, reuse, or recycling equipment.

(3)(A) The cost of replacement parts which serve only to keep existing waste reduction, reuse, or recycling equipment in its ordinary efficient operating condition shall not be included in determining the amount of the credit.

(B) The cost of replacement of existing waste reduction, reuse, or recycling equipment shall not be included in determining the amount of the credit unless the replacement provides greater capacity for recycling or provides the capability to collect, separate, process, modify, convert, treat, or manufacture additional or a different type of solid waste.

(4) The cost of service contracts, sales tax, maintenance, and repairs shall not be included in determining the amount of the credit.

(f)(1) The taxpayer shall refund the amount of the tax credit determined by subdivision (f)(2) of this section if, within three (3) years of the taxable year for which a credit is allowed:

(A) The waste reduction, reuse, or recycling equipment is removed from Arkansas, is disposed of, is transferred to another person, or the taxpayer otherwise ceases to use the required materials or operate in the manner required by this section; or

(B) The director finds that the taxpayer has demonstrated a pattern of intentional failure to comply with final administrative or judicial orders which clearly indicates a disregard for environmental regulation or a pattern of prohibited conduct which could reasonably be expected to result in adverse environmental impact.

(2) If the provisions of subdivision (f)(1) of this section apply, the taxpayer shall refund the amount of the tax credit which was deducted from income tax liability which exceeds the following amounts:

(A) Within the first year, zero dollars (\$0);

(B) Within the second year, an amount equal to thirty-three percent (33%) of the amount of credit allowed; and

(C) Within the third year, an amount equal to sixty-seven percent (67%) of the credit allowed.

(3) Any refund required by subdivision (f)(1)(A) of this section shall apply only to the credit given for the particular waste reduction, reuse, or recycling equipment to which subdivision (f)(1)(A) of this section applies.

(4) Any taxpayer who is required to refund part of a credit pursuant to this subsection shall no longer be eligible to carry forward any amount of that credit which had not been used as of the date such refund is required.

(5)(A) This subsection shall apply to all credits which are certified as a result of applications for certification filed with the Arkansas Department of Environmental Quality on or after July 1, 1993.

(B) This subsection shall not apply to credits which are certified as a result of applications for certification filed with the Arkansas Department of Environmental Quality prior to July 1, 1993.

(C) Taxpayers who file written notice and a project plan with the Arkansas Department of Environmental Quality prior to July 1, 1993, shall be deemed to have filed an application for certification for purposes of subdivision (f)(5) of this section, provided that all the information necessary to complete the application for certification is provided to the Arkansas Department of Environmental Quality on or before December 31, 1993.

(g)(1) Waste reduction, reuse, or recycling equipment shall only be eligible for one (1) tax credit.

(2) The sale or transfer of waste reduction, reuse, or recycling equipment shall not recreate the eligibility for a tax credit.

(h)(1) In the case of a proprietorship or partnership engaged in the business of waste reduction, reuse, or recycling of solid waste, the amount of the credit determined under this section for any taxable year shall be apportioned to each proprietor or partner in proportion to the amount of income from the entity which the proprietor or partner is required to include as gross income.

(2) In the case of a Subchapter S corporation, as allowed by § 26-51-409, the amount of the credit determined under this section for any taxable year shall be apportioned among the persons who are shareholders of the corporation on the last day of the taxable year based on each person's percentage of ownership.

(3) In the case of an estate or trust:

(A) The amount of the credit determined under this section for any taxable year shall be apportioned between the estate or trust and the beneficiaries on the basis of the income of the estate or trust allocable to each; and

(B) Any beneficiary to whom any amount has been apportioned under this subsection shall be allowed, subject to limitations contained in this section, a credit under this section for the amount.

(i)(1) The amount of the credit that may be used by a taxpayer for a taxable year may not exceed the amount of state, individual, or corporate income tax otherwise due.

(2) Any unused credit may be carried over for a maximum of three (3) consecutive years following the taxable year in which the credit originated.

(j) A taxpayer who receives a credit under this section shall not be entitled to claim any other state or local tax credit or deduction based on the purchase of the machinery or equipment, except for the deduction for normal depreciation.

(k)(1)(A) The Arkansas Department of Environmental Quality and the division shall promulgate rules or regulations as are necessary to administer this section.

(B) These rules or regulations may include, but are not limited to, the establishment of technical specifications and of requirements for information and documentation for taxpayers seeking a credit under this section and shall encourage, but not require, the use of Arkansas contractors and post-consumer waste generated in Arkansas in recycling projects which qualify for credits provided by this section.



(2) In order to determine eligibility for the credit or to ensure that the machinery or equipment is being utilized in the required manner, each agency shall have the right to inspect facilities and records of a taxpayer requesting or receiving a credit under this section.

(I) Any person or legal entity aggrieved by a decision of the director under subsection (d) of this section or subdivision (f)(1)(B) of this section may appeal to the Arkansas Pollution Control and Ecology Commission through administrative procedures adopted by the commission and to the courts in the manner provided in §§ 8-4-222 — 8-4-229.

**History.** Acts 1991, No. 748, § 1; 1993, No. 654, § 1; 1999, No. 1164, §§ 185-188; 2007, No. 827, § 218.

### RESEARCH REFERENCES

**Am. Jur.** 71 *Am. Jur. 2d State Tax. Environmental Law*, 14 U. Ark. Little Rock § 335.5. L.J. 779.  
**U. Ark. Little Rock L.J.** Survey—En-

### **26-51-507. Employer-provided child care — As qualified under § 26-52-401.**

(a) A business which qualifies for the exemption from the gross receipts tax under former § 26-52-401(29) shall be allowed an income tax credit of three and nine-tenths percent (3.9%) of the annual salary of employees employed exclusively in providing child care services.

(b) If two (2) or more businesses participate in a child care program for their employees as provided by former § 26-52-401(29), then each business will be allowed an income tax credit of three and nine-tenths percent (3.9%) of the annual salary of only those employees who are on the respective business' payroll and are employed exclusively for providing child care services.

(c)(1) To qualify for the income tax credit, the revenue to the business or businesses from the child care facility cannot exceed the direct operating costs of the facility. If, on an annual basis, the child care facility receives revenue which exceeds the direct operating costs of the facility, the business or businesses will not be entitled to the income tax credit.

(2) As used in this section, "direct operating costs" means:

(A) The cost of food and beverages provided to the children;

(B) The cost of labor for personnel whose services are performed exclusively on the premises of the child care facility for the care of the children and all related employment taxes paid by the employer; and

(C) All materials and supplies necessary to operate the child care facility.

(d) The income tax credit created by subsection (a) of this section shall first be available in the taxable year following the year the business makes payment of wages to child care workers. To the extent that the credit is not fully utilized in this first year, it may be carried

forward for an additional two (2) years. Any credit remaining thereafter shall expire.

(e) The income tax provisions of this section shall be in full force and effect for all income tax years beginning on and after January 1, 1993.

**History.** Acts 1993, No. 820, §§ 3, 4; 1993, No. 987, §§ 3, 4; 1995, No. 850, §§ 6, 7.

**A.C.R.C. Notes.** Former § 26-52-401(29), redesignated as (30), and referred

to in subsection (a) of this section, was repealed by Acts 1995, No. 850, § 2. For present law concerning income tax credits for employer-provided child care, see § 26-51-508.

### **26-51-508. Employer-provided child care — As qualified under § 26-52-516 or § 26-53-132.**

(a) A business which qualifies for the refund of the gross receipts tax or compensating use tax under § 26-52-516 or § 26-53-132 shall be allowed an income tax credit of three and nine-tenths percent (3.9%) of the annual salary of its employees employed exclusively in providing child care service, or a five thousand dollar (\$5,000) income tax credit for the first tax year the business provides its employees with a child care facility.

(b) If two (2) or more businesses participate in a child care program for their employees as provided by § 26-52-516 or § 26-53-132, then each business will be allowed an income tax credit of three and nine-tenths percent (3.9%) of the annual salary of only those employees who are on the respective business' payroll and are employed exclusively for providing child care services. The first year's five thousand dollar (\$5,000) credit will be prorated among the businesses based upon the percentage of the cost paid by each business for the initial construction and equipping of the child care facility.

(c)(1)(A) To qualify for the income tax credit, the revenue to the business or businesses from the child care facility cannot exceed the direct operating costs of the facility.

(B) If, on an annual basis, the business receives revenues from the operation of the child care facility which exceed the direct operating costs of the facility, the businesses will not be entitled to the income tax credit.

(2) As used in this subsection, "direct operating costs" means:

(A) The cost of food and beverages provided to the children;

(B) The cost of labor for personnel whose services are performed exclusively on the premises of the child care facility for the care of the children and all related employment taxes paid by the employer; and

(C) All materials and supplies necessary to operate the child care facility.

(d) The income tax credit created by subsection (a) of this section shall first be available in the taxable year following the year the business makes payment of wages to child care workers. To the extent that the credit is not fully utilized in this first year, it may be carried forward for an additional two (2) years. Any credit remaining thereafter shall expire.

**History.** Acts 1995, No. 850, § 5.

### **26-51-509. Youth apprenticeship program.**

(a) As used in this section:

(1) "Department" means the Department of Finance and Administration;

(2) "Office" means the Office of Apprenticeship of the United States Department of Labor; and

(3) "Youth apprentice" means an individual between the ages of sixteen (16) and twenty-one (21) years who is enrolled in a public or private secondary or postsecondary school.

(b)(1) A taxpayer who employs a youth apprentice in a registered apprenticeship program as provided in 29 C.F.R. § 29.1 et seq., Part 29, as in effect on January 1, 1995, shall be allowed a credit in the amount of two thousand dollars (\$2,000) or ten percent (10%) of the wages earned by the youth apprentice, whichever is less, against the tax imposed by the Income Tax Act of 1929, § 26-51-101 et seq., for each such apprentice.

(2)(A) A partner's or member's distributive share of the credit shall be determined by the partnership or limited liability company agreement, unless the agreement does not have substantial economic effect or does not provide for the allocation of credits.

(B) If the agreement does not have substantial economic effect or does not provide for the allocation of the credit, the credit shall be allocated according to the partner's or member's interest in the partnership, pursuant to federal 26 U.S.C. § 704(b), as in effect on January 1, 1995.

(c)(1) To claim the benefits of this section, a taxpayer must obtain a certification from the office certifying to the Revenue Division of the Department of Finance and Administration that the taxpayer has met all the requirements and qualifications set forth in this section.

(2) The certification to the department shall include the total amount of wages paid to each youth apprentice employed by the taxpayer or 501(c)(3) corporation in the taxable year for which the taxpayer claims the credit provided in this section.

(d)(1) The amount of the credit that may be used by a taxpayer for a taxable year may not exceed the amount of individual or corporate income tax otherwise due.

(2) Any unused credit may be carried over for a maximum of two (2) consecutive taxable years.

(e) If the business is an S corporation, the pass-through provisions of § 26-51-409, as in effect for the taxable year the credit is earned, shall be applicable.

(f) A taxpayer who trains a youth apprentice in a registered youth apprenticeship program as provided in subsection (b) of this section shall be entitled to the tax credit provided in this section for such youth apprentice, even though the apprentice receives his or her wages for such training from a 501(c)(3) corporation.



(g)(1) The division shall promulgate such rules and regulations as may be deemed necessary to carry out the purposes of this section.

(2) The division shall consult with the office during the promulgation of the rules and regulations.

**History.** Acts 1995, No. 1103, §§ 1-5. § 501(c)(3).

**A.C.R.C. Notes.** The term “501(c)(3)” in this section is a reference to 26 U.S.C.

**Cross References.** Youth apprenticeship tax credit, § 26-51-1601 et seq.

## 26-51-510. [Repealed.]

**Publisher’s Notes.** This section, concerning federal Social Security (OASDI) tax credit, was repealed by Acts 2003, No.

1724, § 1. The section was derived from Acts 1997, No. 328, § 4; 2001, No. 773, § 11.

## 26-51-511. Coal mining, producing, and extracting.

(a) As used in this section:

(1) “Coal mining enterprise” means:

(A) An Arkansas taxpayer primarily engaged in surface or high-wall mining, producing, or extracting coal in Arkansas; and

(B) A holder of a valid mining permit issued by the Arkansas Department of Environmental Quality to allow surface or highwall mining;

(2) “Eligible transferee” means any Arkansas taxpayer subject to the Income Tax Act of 1929, § 26-51-101 et seq., the premium tax imposed by § 23-75-119, or the premium tax imposed by § 23-63-1614; and

(3) “Taxpayer” means a coal mining enterprise or an eligible transferee.

(b)(1) There shall be allowed a credit against the income tax imposed by the Income Tax Act of 1929, § 26-51-101 et seq., the premium tax imposed by § 23-75-119, or the premium tax imposed by § 23-63-1614 in an amount as determined in subsection (c) of this section for a taxpayer.

(2) A credit allowed under this section shall expire after five (5) tax years following the tax year in which the tax credit was earned.

(c)(1)(A) A credit of two dollars (\$2.00) per ton of coal mined, produced, or extracted shall be allowed on each ton of coal mined in Arkansas by a coal mining enterprise in a tax year.

(B) An additional credit of three dollars (\$3.00) per ton of coal mined, produced, or extracted shall be allowed on each ton of coal mined in Arkansas in excess of fifty thousand (50,000) tons by a coal mining enterprise in a tax year.

(2) A credit under this section is earned only if the coal is sold to an electric generation plant for less than forty dollars (\$40.00) per ton excluding freight charges.

(3) At the election of the taxpayer, the credit may be treated as:

(A) Payment of a tax;

(B) Prepayment of a tax; or

(C) Prepayment of an estimated tax.

(d)(1) The credits allowed under this section shall be freely transferable by written agreement to subsequent transferees at any time during the five (5) years following the year the credit was earned.

(2) A coal mining enterprise that has earned a credit under this section may transfer the credit in writing to an eligible transferee.

(3)(A) The coal mining enterprise and the eligible transferee shall jointly file a copy of the written credit transfer agreement with the Director of the Department of Finance and Administration within thirty (30) days of the credit transfer.

(B) The written credit transfer agreement shall contain:

(i) The name of the parties to the transfer;

(ii) The amount of the credit transferred;

(iii) The tax year that the credit was originally earned by the coal mining enterprise; and

(iv) The tax year or years in which the credit may be claimed.

(C)(i) The Department of Finance and Administration shall promulgate rules and regulations to permit the verification of the validity and timeliness of a claimed tax credit that has been transferred under this subsection.

(ii) The rules and regulations shall not unduly restrict or hinder the transfers of credits under this section.

**History.** Acts 2003, No. 993, § 1.

## **26-51-512. Rice straw tax credit.**

(a) As used in this section:

(1) "End user" means a person who purchases and uses rice straw for processing, manufacturing, generating energy, or producing ethanol; and

(2) "Rice straw" means the dry stems of rice left after the seed heads have been removed.

(b)(1) There is allowed a credit against the income tax imposed by the Income Tax Act of 1929, § 26-51-101 et seq., in the amount of fifteen dollars (\$15.00) for each ton of rice straw over five hundred (500) tons that is purchased by an Arkansas taxpayer who is the end user.

(2) The amount of credit that may be used by the taxpayer for a taxable year may not exceed fifty percent (50%) of the amount of income tax due for that tax year.

(3) Any unused credit may be carried forward for ten (10) consecutive tax years following the tax year the credit was earned.

(c) A taxpayer who claims a credit under this section shall not claim any other state tax credit or deduction for the purchase of rice straw.

**History.** Acts 2005, No. 2247, § 1.

**26-51-513. Arkansas historic rehabilitation income tax credit.**

(a) In addition to any income tax credit not related to the same eligible property for which a taxpayer qualifies, the taxpayer is allowed an income tax credit for the amount of the Arkansas historic rehabilitation income tax credit allowed by the certification of completion issued by the Department of Arkansas Heritage under the Arkansas Historic Rehabilitation Income Tax Credit Act, § 26-51-2201 et seq.

(b) The amount of the income tax credit under this section that may be claimed by the taxpayer in a tax year shall not exceed the amount of state income tax due by the taxpayer.

(c) Any unused income tax credit under this section may be carried forward for a maximum of five (5) consecutive tax years for credit against the state income tax.

(d) The Director of the Department of Finance and Administration shall promulgate rules to implement this section.

**History.** Acts 2009, No. 498, § 2.

**26-51-514. Cigarette receptacle tax credit [Effective if contingency in Acts 2009, No. 1500, § 2 is met].**

(a) As used in this section, “cigarette receptacle” means a receptacle or urn specifically designed for the disposal of cigarette litter such as cigarette butts and ash.

(b)(1) A business or commercial enterprise with fifty (50) or fewer employees is allowed an income tax credit against the income tax imposed by the Income Tax Act of 1929, § 26-51-101 et seq., for the purchase of a cigarette receptacle that is placed in service during the taxable year.

(2) The amount of the income tax credit under this section is twenty percent (20%) of the purchase price of the cigarette receptacle.

(3) A taxpayer may claim the income tax credit under this section only one (1) time and only for one (1) cigarette receptacle.

(c) Any unused income tax credit under this section may be carried forward for three (3) consecutive tax years following the tax year the income tax credit was earned.

(d) The amount of the income tax credit under this section that may be claimed by the taxpayer in a tax year shall not exceed the amount of income tax due by the taxpayer.

(e) The Department of Finance and Administration shall promulgate rules to implement this section.

**History.** Acts 2009, No. 1500, § 1.

**A.C.R.C. Notes.** Acts 2009, No. 1500, § 2, provided: “Contingent Effectiveness. This act is effective if the Chief Fiscal Officer of the State certifies that additional funding has been provided to state general revenues from other funding sources and is available for use during

fiscal year 2010 in an amount sufficient to replace the general revenue reduction for the fiscal year 2010 that would result from the allowance of the income tax credit provided in this act. The Chief Fiscal Officer of the State will make the same determination for fiscal year 2011 and each fiscal year thereafter. At any time



that the Chief Fiscal officer of the State determines that additional funding from sources other than state general revenues does not exist in an amount sufficient to replace the general revenue reduction for that fiscal year from the allowance of the income tax credit provided in this act, the income tax credit provided by this act will expire. The Chief Fiscal Officer of the

State shall provide notice to the Director of the Bureau of Legislative Research when the contingencies in this section have been met."

As of July 16th, 2012, the Chief Fiscal Officer of the State had not make the certification described in Acts 2009, No. 1500, § 2.

## SUBCHAPTER 6 — PROPERTY TAX CREDIT FOR SENIOR CITIZENS

### SECTION.

26-51-601 — 26-51-609. [Repealed.]

### 26-51-601 — 26-51-609. [Repealed.]

**Publisher's Notes.** Sections 26-51-601 — 26-51-608, concerning property tax credit for senior citizens, were repealed by Acts 2000 (2d Ex. Sess.), Nos. 1 and 2, § 7. Section 26-51-609, concerning written notice, was repealed by Acts 2001, No. 979, § 1 and was previously repealed pursuant to the terms of Acts 1999, No. 900, § 5. These sections were derived from the following sources:

26-51-601. Acts 1973, No. 63, § 1; 1977, No. 522, § 1; A.S.A. 1947, § 84-2021.4; Acts 1987, No. 454, § 1; 1991, No. 655, § 1.

26-51-602. Acts 1973, No. 63, § 2; 1975, No. 30, § 1; 1977, No. 525, § 1; 1979, No. 607, § 1; 1983, No. 134, § 1; A.S.A. 1947, § 84-2021.5; Acts 1987, No. 454, § 2, 1991, No. 655, § 2; 1991, No. 776, § 1.

26-51-603. Acts 1973, No. 63, §§ 3, 11; 1977, No. 522, § 2; 1981, No. 367, § 1; A.S.A. 1947, § 84-2021.6, 84-2021.14; Acts 1987, No. 454, § 3; 1991, No. 655, § 3; 1999, No. 940, § 1.

26-51-604. Acts 1973, No. 63, §§ 4, 6, 8, 9; A.S.A. 1947, §§ 84-2021.7, 84-2021.9, 84-2021.11, 84-2021.12; Acts 1987, No. 454, §§ 4, 7; 1991, No. 655, § 4.

26-51-605. Acts 1973, No. 63, § 5; A.S.A. 1947, § 84-2021.8; Acts 1987, No. 454, § 5.

26-51-606. Acts 1973, No. 63, § 10; 1979, No. 401, § 45; A.S.A. 1947, § 84-2021.13.

26-51-607. Acts 1973, No. 63, §§ 3, 6, 7; 1975, No. 30, § 2; 1977, No. 522, § 2; 1979, No. 412, § 1; 1981, No. 367, § 1; 1983, No. 130, § 1; A.S.A. 1947, §§ 84-2021.6, 84-2021.9, 84-2021.10; Acts 1987, No. 454, §§ 3, 6; 1991, No. 230, § 1; 1991, No. 655, § 5; 1997, No. 328, § 9; 1999, No. 900, §§ 1, 2.

26-51-608. Acts 1973, No. 63, § 14; 1974 (1st Ex. Sess.), No. 30, § 2; A.S.A. 1947, § 84-2021.17.

26-51-609. Acts 1999 No. 900, § 3.

## SUBCHAPTER 7 — UNIFORM DIVISION OF INCOME FOR TAX PURPOSES ACT

### SECTION.

26-51-701. Definitions.

26-51-702. Apportionment of net income authorized.

26-51-703. Taxpayer taxable in another state.

26-51-704. Nonbusiness income.

26-51-705. Rents and royalties — Extent of utilization of tangible personal property.

26-51-706. Capital gains and losses from sales of property.

26-51-707. Interest and dividends.

### SECTION.

26-51-708. Patent and copyright royalties.

26-51-709. Business income.

26-51-710. Real and tangible personal property — Factor.

26-51-711. Original cost of property — Annual rental rate.

26-51-712. Average value of property.

26-51-713. Payroll factor.

26-51-714. Compensation for service — Determination of payment in state.

SECTION.

- 26-51-715. Sales factor.
- 26-51-716. Sales of tangible personal property.
- 26-51-717. Sales — Income-producing activity.
- 26-51-718. Procedure when allocation does not fairly represent taxpayer's business activity.

SECTION.

- 26-51-719. Construction.
- 26-51-720. Severability.
- 26-51-721. Repealer.
- 26-51-722. Effective date.
- 26-51-723. Legislative findings — Emergency.

**Publisher's Notes.** For Comments regarding the Uniform Division of Income for Tax Purposes, see Commentaries Volume B.

**Effective Dates.** Acts 1995, No. 682, § 3: effective for tax years beginning on or after January 1, 1995.

Acts 2001, No. 1228, § 2: effective for tax years beginning on or after January 1, 2001.

Acts 2003, No. 1183, § 2: effective for tax years beginning on or after January 1, 2003.

RESEARCH REFERENCES

**ALR.** Construction and application of Uniform Division of Income for Tax Purposes Act. 8 A.L.R.4th 934.

Oil and gas royalty as real or personal property. 56 A.L.R.4th 539.

CASE NOTES

**Purpose.**

The Uniform Division of Income for Tax Purposes Act is merely a procedural vehicle by which the states can resolve conflicts among themselves and aggrieved taxpayers. *Land O'Frost, Inc. v. Pledger*, 308 Ark. 208, 823 S.W.2d 887 (1992).

The Uniform Division of Income for Tax Purposes Act governs the manner in which Arkansas may impose income and franchise taxes on the earnings of multi-state and multinational corporations do-

ing business in the state, and is designed to fairly apportion among the states in which a corporation does business the fair amount of regular business income earned by the corporation's activities in each state. *Pledger v. Getty Oil Exploration Co.*, 309 Ark. 257, 831 S.W.2d 121 (1992).

**Cited:** *St. Louis S.W. Ry. v. Ragland*, 304 Ark. 1, 800 S.W.2d 410 (1990); *Pledger v. Illinois Tool Works, Inc.*, 306 Ark. 134, 812 S.W.2d 101 (1991).

26-51-701. Definitions.

- As used in this Act, unless the context otherwise requires:
- (a) "Business income" means income arising from transactions and activity in the regular course of the taxpayer's trade or business and includes income from tangible and intangible property if the acquisition, management, and disposition of the property constitute integral parts of the taxpayer's regular trade or business operations.
  - (b) "Commercial domicile" means the principal place from which the trade or business of the taxpayer is directed or managed.

(c) "Compensation" means wages, salaries, commissions, and any other form of remuneration paid to employees for personal services.

(d) [Repealed.]

(e) "Nonbusiness income" means all income other than business income.

(f) "Public utility" means any business entity which owns or operates for public use any plant, equipment, property, franchise, or license for the transmission of communications, transportation of goods or persons, or the production, storage, transmission, sale, delivery, or furnishing of electricity, water, steam, oil, oil products, or gas.

(g) "Sales" means all gross receipts of the taxpayer not allocated under §§ 26-51-704 — 26-51-708.

(h) "State" means any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, and any foreign country or political subdivision thereof.

**History.** Acts 1961, No. 413, § 1; 1963, No. 529, § 1; 1979, No. 1024, § 1; A.S.A. 1947, § 84-2055; Acts 1989, No. 494, § 3.

**A.C.R.C. Notes.** Former subsection (d) of this section defined "financial organization". The repeal of subsection (d) was a deviation from the official version of the

Uniform Division of Income for Tax Purposes Act drafted by the National Conference of Commissioners on Uniform State Laws.

**Meaning of "this Act".** Acts 1961, No. 413, codified as 26-51-701 et seq.

## RESEARCH REFERENCES

**Ark. L. Rev.** Case Note, *Pledger v. Illinois Tool Works, Inc.*: Arkansas Belatedly Recognizes the Unitary Business Principle as a Limitation of Its Power to

Tax Capital Gains of Nondomiciliary Corporations, 45 Ark. L. Rev. 597.

**U. Ark. Little Rock L.J.** Survey, Taxation, 14 U. Ark. Little Rock L.J. 401.

## CASE NOTES

### ANALYSIS

Business Income.

—In General.

—Unitary Business Principle.

Commercial Domicile.

**Business Income.**

—In General.

The focus of subsection (a) is the nature of the taxpayer's business, and business income arising from either of two sources: (1) transactions and activity in the regular course of the taxpayer's business, or (2) income from the acquisition, management, and disposition of property that constitutes integral parts of the taxpayer's regular business. *Pledger v. Getty Oil Exploration Co.*, 309 Ark. 257, 831 S.W.2d 121 (1992).

### —Unitary Business Principle.

Under the "unitary business" rationale, the general test for determining whether a diversified group of businesses had a unitary business relationship was to determine whether the income that the state was attempting to tax resulted from functional integration, centralization of management, and economies of scale utilized by the corporate group. *Pledger v. Illinois Tool Works, Inc.*, 306 Ark. 134, 812 S.W.2d 101 (1991), cert. denied, *Pledger v. Illinois Tool Works*, 502 U.S. 958, 112 S. Ct. 418 (1991).

Applying the unitary business principle, the plaintiff's capital gains income from the sale of stock interest in three other companies was nonbusiness income for Arkansas's Uniform Division of Income for Tax Purposes Act (UDITPA) purposes;



for at no time did the plaintiff hold the majority of the stock in these companies, and did not have a controlling interest or part. *Pledger v. Illinois Tool Works, Inc.*, 306 Ark. 134, 812 S.W.2d 101 (1991), cert. denied, *Pledger v. Illinois Tool Works*, 502 U.S. 958, 112 S. Ct. 418 (1991).

Plaintiff's capital gains which were not an integral part of its regular manufacturing and leasing businesses did not fit the unitary business principle test. *Pledger v. Illinois Tool Works, Inc.*, 306 Ark. 134, 812 S.W.2d 101 (1991), cert. denied, *Pledger v. Illinois Tool Works*, 502 U.S. 958, 112 S. Ct. 418 (1991).

### **Commercial Domicile.**

Taxpayers were not entitled to a "commercial domicile" for income tax purposes, since there was no evidence that they paid any income tax in the state of Texas, their place of business, or that Texas even had an income tax law. *Shinn v. Heath*, 259 Ark. 577, 535 S.W.2d 57 (1976).

**Cited:** *Cheney v. St. Louis S. R. Co.*, 239 Ark. 870, 394 S.W.2d 731 (1965); *Collins v. Skelton*, 256 Ark. 955, 512 S.W.2d 542 (1974); *Land O'Frost, Inc. v. Pledger*, 308 Ark. 208, 823 S.W.2d 887 (1992).

## **26-51-702. Apportionment of net income authorized.**

Any taxpayer having income from business activity which is taxable both within and without this state, other than activity as a public utility or the rendering of purely personal services by an individual, shall allocate and apportion his net income as provided in this Act.

**History.** Acts 1961, No. 413, § 2; A.S.A. 1947, § 84-2056; Acts 1989, No. 494, § 1.

**A.C.R.C. Notes.** The 1989 amendment to this section deleting the term "financial organization" was a deviation from the official version of the Uniform Division of

Income for Tax Purposes Act drafted by the National Conference of Commissioners on Uniform State Laws.

**Meaning of "this Act".** Acts 1961, No. 413, codified as 26-51-701 et seq.

## **CASE NOTES**

### **Provisions Not Applicable.**

Income received by an Arkansas resident partner from a Texas partnership that did not conduct business in Arkansas was not exempted by this section from Arkansas income tax. *Collins v. Skelton*, 256 Ark. 955, 512 S.W.2d 542 (1974).

Taxpayers were not entitled to a "commercial domicile" for income tax purposes under this subchapter applying to income from business activity that is taxable both within and without the state, since there was no evidence that they paid any income tax in the state of Texas, their place of business, or that Texas even had an

income tax law. *Shinn v. Heath*, 259 Ark. 577, 535 S.W.2d 57 (1976).

Under the unitary business principle, the taxpayer must show that income was earned in a course of activities, unrelated to the sale of its products in that state, for it not to be subject to apportioned tax. *Pledger v. Illinois Tool Works, Inc.*, 306 Ark. 134, 812 S.W.2d 101 (1991), cert. denied, *Pledger v. Illinois Tool Works*, 502 U.S. 958, 112 S. Ct. 418 (1991).

**Cited:** *United States Tobacco Co. v. Martin*, 304 Ark. 119, 801 S.W.2d 256 (1990).

## **26-51-703. Taxpayer taxable in another state.**

For purposes of allocation and apportionment of income under this Act, a taxpayer is taxable in another state if (1) in that state the taxpayer is subject to a net income tax, a franchise tax measured by net income, or any other tax measured by income or other measure of business activity in the state and the taxpayer files the requisite tax

return in the other state, or (2) the state has no net income tax, franchise tax measured by net income, or any other tax measured by income or other measure of business activity in the state as provided in subdivision (1) of this section and the taxpayer has activities in the other state that exceed those protected by 15 U.S.C. §§ 381 — 385.

**History.** Acts 1961, No. 413, § 3; A.S.A. 1947, § 84-2057; Acts 2001, No. 1228, § 1; 2003, No. 1183, § 1.

**A.C.R.C. Notes.** The 2001 and 2003 amendments rewriting this section were deviations from the official version of the

Uniform Division of Income for Tax Purposes Act drafted by the National Conference of Commissioners on Uniform State Laws.

**Meaning of “this Act”.** Acts 1961, No. 413, codified as 26-51-701 et seq.

### CASE NOTES

**Cited:** *Cheney v. St. Louis S. R. Co.*, 239 Ark. 870, 394 S.W.2d 731 (1965).

### 26-51-704. Nonbusiness income.

Rents and royalties from real or tangible personal property, capital gains, interest, dividends, or patent or copyright royalties, to the extent that they constitute nonbusiness income, shall be allocated as provided in §§ 26-51-705 — 26-51-708.

**History.** Acts 1961, No. 413, § 4; A.S.A. 1947, § 84-2058.

### RESEARCH REFERENCES

**Ark. L. Rev.** Case Note, *Pledger v. Illinois Tool Works, Inc.*: Arkansas Belatedly Recognizes the Unitary Business Principle as a Limitation of Its Power to

Tax Capital Gains of Nondomiciliary Corporations, 45 Ark. L. Rev. 597.

**U. Ark. Little Rock L.J.** Survey, Taxation, 14 U. Ark. Little Rock L.J. 401.

### CASE NOTES

**Cited:** *Pledger v. Getty Oil Exploration Co.*, 309 Ark. 257, 831 S.W.2d 121 (1992).

### 26-51-705. Rents and royalties — Extent of utilization of tangible personal property.

(a) Net rents and royalties from real property located in this state are allocable to this state.

(b) Net rents and royalties from tangible personal property are allocable to this state:

(1) if and to the extent that the property is utilized in this state, or

(2) in their entirety if the taxpayer's commercial domicile is in this state and the taxpayer is not organized under the laws of or taxable in the state in which the property is utilized.

(c) The extent of utilization of tangible personal property in a state is determined by multiplying the rents and royalties by a fraction, the

numerator of which is the number of days of physical location of the property in the state during the rental or royalty period in the taxable year and the denominator of which is the number of days of physical location of the property everywhere during all rental or royalty periods in the taxable year. If the physical location of the property during the rental or royalty period is unknown or unascertainable by the taxpayer, tangible personal property is utilized in the state in which the property was located at the time the rental or royalty payer obtained possession.

**History.** Acts 1961, No. 413, § 5; A.S.A. 1947, § 84-2059.

### RESEARCH REFERENCES

**U. Ark. Little Rock L.J.** Survey, Taxation, 14 U. Ark. Little Rock L.J. 401.

### 26-51-706. Capital gains and losses from sales of property.

(a) Capital gains and losses from sales of real property located in this state are allocable to this state.

(b) Capital gains and losses from sales of tangible personal property are allocable to this state if:

(1) the property had a situs in this state at the time of the sale, or

(2) the taxpayer's commercial domicile is in this state, or

(3) the property has been included in depreciation which has been allocated to this state; in which event gains or losses on such sales shall be allocated on the percentage that is used in the formula for allocating income to Arkansas during the year of such sales.

(c) Capital gains and losses from sales of intangible personal property are allocable to this state if the taxpayer's commercial domicile is in this state.

**History.** Acts 1961, No. 413, § 6; A.S.A. 1947, § 84-2060.

**A.C.R.C. Notes.** Subsection (b) of this section deviates from the official version of the Uniform Division of Income for Tax Purposes Act drafted by the National Conference of Commissioners on Uniform

State Laws. The phrase "and the taxpayer is not taxable in the state in which the property had a situs" was omitted from subdivision (b)(2) of this section and subdivision (b)(3) of this section is not present in the official version.

### 26-51-707. Interest and dividends.

Interest and dividends are allocable to this state if the taxpayer's commercial domicile is in this state.

**History.** Acts 1961, No. 413, § 7; A.S.A. 1947, § 84-2061.



## CASE NOTES

**Dividends.**

The unitary business principle does not apply to dividend income only. *Pledger v. Illinois Tool Works, Inc.*, 306 Ark. 134, 812 S.W.2d 101 (1991), cert. denied, *Pledger v. Illinois Tool Works*, 502 U.S. 958, 112 S. Ct. 418 (1991).

**Cited:** *Collins v. Skelton*, 256 Ark. 955, 512 S.W.2d 542 (1974); *Pledger v. Getty Oil Exploration Co.*, 309 Ark. 257, 831 S.W.2d 121 (1992).

**26-51-708. Patent and copyright royalties.**

(a) Patent and copyright royalties are allocable to this state:

(1) if and to the extent that the patent or copyright is utilized by the payer in this state, or

(2) if and to the extent that the patent or copyright is utilized by the payer in a state in which the taxpayer is not taxable and the taxpayer's commercial domicile is in this state.

(b) A patent is utilized in a state to the extent that it is employed in production, fabrication, manufacturing, or other processing in the state or to the extent that a patented product is produced in the state. If the basis of receipts from patent royalties does not permit allocation to states or if the accounting procedures do not reflect states of utilization, the patent is utilized in the state in which the taxpayer's commercial domicile is located.

(c) A copyright is utilized in a state to the extent that printing or other publication originates in the state. If the basis of receipts from copyright royalties does not permit allocation to states or if the accounting procedures do not reflect states of utilization, the copyright is utilized in the state in which the taxpayer's commercial domicile is located.

**History.** Acts 1961, No. 413, § 8; A.S.A. 1947, § 84-2062.

**26-51-709. Business income.**

All business income shall be apportioned to this state by multiplying the income by a fraction, the numerator of which is the property factor plus the payroll factor plus double the sales factor, and the denominator of which is four.

**History.** Acts 1961, No. 413, § 9; A.S.A. 1947, § 84-2063; Acts 1995, No. 682, § 2.

**A.C.R.C. Notes.** The 1995 amendment to this section was a deviation from the official version of the Uniform Division of

Income for Tax Purposes Act drafted by the National Conference of Commissioners on Uniform State Laws. The 1995 amendment inserted "double" and changed "three" to "four".

**RESEARCH REFERENCES**

**U. Ark. Little Rock L.J.** Survey, Taxation, 14 U. Ark. Little Rock L.J. 401.

**CASE NOTES****Nonbusiness Income.**

Applying the unitary business principle, the plaintiff's capital gains income from the sale of stock interest in three other companies was nonbusiness income. *Pledger v. Illinois Tool Works, Inc.*, 306

Ark. 134, 812 S.W.2d 101 (1991), cert. denied, *Pledger v. Illinois Tool Works*, 502 U.S. 958, 112 S. Ct. 418 (1991).

**Cited:** *Pledger v. Getty Oil Exploration Co.*, 309 Ark. 257, 831 S.W.2d 121 (1992).

**26-51-710. Real and tangible personal property — Factor.**

The property factor is a fraction, the numerator of which is the average value of the taxpayer's real and tangible personal property owned or rented and used in this state during the tax period and the denominator of which is the average value of all the taxpayer's real and tangible personal property owned or rented and used during the tax period.

**History.** Acts 1961, No. 413, § 10; A.S.A. 1947, § 84-2064.

**CASE NOTES**

**Cited:** *Pledger v. Getty Oil Exploration Co.*, 309 Ark. 257, 831 S.W.2d 121 (1992).

**26-51-711. Original cost of property — Annual rental rate.**

Property owned by the taxpayer is valued at its original cost. Property rented by the taxpayer is valued at eight times the net annual rental rate. Net annual rental rate is the annual rental rate paid by the taxpayer less any annual rental rate received by the taxpayer from sub-rentals.

**History.** Acts 1961, No. 413, § 11; A.S.A. 1947, § 84-2065.

**CASE NOTES****Substantial Evidence.**

Where the president of the surviving corporation had testified that the acquired equipment was used in the daily operations of the surviving corporation; that it would be impractical, if not impossible, to maintain records of which piece of equipment worked on which jobs; and that it would be impossible to determine the amount of income each individual piece of equipment had earned, and where the

corporation's accountant testified that he had used the only acceptable method available to him to determine the pro rata share of income earned by the acquired equipment; that the use of the original cost of property rather than the book value was required by the Arkansas Statutes in the division and apportionment of income earned by multistate corporations; and that the information necessary to use one of the other methods to arrive at a pro

rata share was not available to the accountant, substantial evidence supported the chancellor's decision that the surviving corporation had presented a prima facie case to prove that the equipment acquired by the surviving corporation in the merger had generated income of

\$151,500.54, an amount sufficient to absorb the carryover net operating loss of \$95,182.80 claimed by the surviving corporation. *Jones v. Carter Constr. Co.*, 266 Ark. 358, 583 S.W.2d 63 (1979).

**Cited:** *Pledger v. Getty Oil Exploration Co.*, 309 Ark. 257, 831 S.W.2d 121 (1992).

### **26-51-712. Average value of property.**

The average value of property shall be determined by averaging the values at the beginning and ending of the tax period, but the Director of the Department of Finance and Administration may require the averaging of monthly values during the tax period if reasonably required to reflect properly the average value of the taxpayer's property.

**History.** Acts 1961, No. 413, § 12; A.S.A. 1947, § 84-2066.

#### **CASE NOTES**

**Cited:** *Pledger v. Getty Oil Exploration Co.*, 309 Ark. 257, 831 S.W.2d 121 (1992).

### **26-51-713. Payroll factor.**

The payroll factor is a fraction, the numerator of which is the total amount paid in this state during the tax period by the taxpayer for compensation, and the denominator of which is the total compensation paid everywhere during the tax period.

**History.** Acts 1961, No. 413, § 13; A.S.A. 1947, § 84-2067.

#### **CASE NOTES**

**Cited:** *Pledger v. Getty Oil Exploration Co.*, 309 Ark. 257, 831 S.W.2d 121 (1992).

### **26-51-714. Compensation for service — Determination of payment in state.**

Compensation is paid in this state if:

(a) the individual's service is performed entirely within the state; or  
(b) the individual's service is performed both within and without the state, but the service performed without the state is incidental to the individual's service within the state; or

(c) some of the service is performed in the state and (1) the base of operations or, if there is no base of operations, the place from which the service is directed or controlled is in the state, or (2) the base of operations or the place from which the service is directed or controlled is not in any state in which some part of the service is performed, but the individual's residence is in this state.



**History.** Acts 1961, No. 413, § 14;  
A.S.A. 1947, § 84-2068.

#### CASE NOTES

**Cited:** Pledger v. Getty Oil Exploration Co., 309 Ark. 257, 831 S.W.2d 121 (1992).

#### **26-51-715. Sales factor.**

The sales factor is a fraction, the numerator of which is the total sales of the taxpayer in this state during the tax period, and the denominator of which is the total sales of the taxpayer everywhere during the tax period.

**History.** Acts 1961, No. 413, § 15;  
A.S.A. 1947, § 84-2069.

#### CASE NOTES

**Cited:** Pledger v. Getty Oil Exploration Co., 309 Ark. 257, 831 S.W.2d 121 (1992).

#### **26-51-716. Sales of tangible personal property.**

Sales of tangible personal property are in this state if:

(a) the property is delivered or shipped to a purchaser, other than the United States government, within this state regardless of the f.o.b. point or other conditions of the sale; or

(b) the property is shipped from an office, store, warehouse, factory, or other place of storage in this state and (1) the purchaser is the United States government or (2) the taxpayer is not taxable in the state of the purchaser.

**History.** Acts 1961, No. 413, § 16;  
A.S.A. 1947, § 84-2070.

#### CASE NOTES

**Cited:** Pledger v. Getty Oil Exploration Co., 309 Ark. 257, 831 S.W.2d 121 (1992).

#### **26-51-717. Sales — Income-producing activity.**

Sales, other than sales of tangible personal property, are in this state if:

(a) the income-producing activity is performed in this state; or

(b) the income-producing activity is performed both within and without the state, in which event the portion of income allocable to this state shall be the percentage that is used in the formula for allocating income to Arkansas during the year of the sale.

**History.** Acts 1961, No. 413, § 17; A.S.A. 1947, § 84-2071.

**A.C.R.C. Notes.** Subsection (b) of this section deviates from the official version of the Uniform Division of Income for Tax Purposes Act drafted by the National Conference of Commissioners on Uniform

State Laws. The official version reads "the income-producing activity is performed both in and outside this state and a greater proportion of the income-producing activity is performed in this state than in any other state, based on costs of performance."

### CASE NOTES

**Cited:** Pledger v. Getty Oil Exploration Co., 309 Ark. 257, 831 S.W.2d 121 (1992).

### **26-51-718. Procedure when allocation does not fairly represent taxpayer's business activity.**

If the allocation and apportionment provisions of this Act do not fairly represent the extent of the taxpayer's business activity in this state, the taxpayer may petition for or the Director of the Department of Finance and Administration may require, in respect to all or any part of the taxpayer's business activity, if reasonable:

- (a) separate accounting;
- (b) the exclusion of any one or more of the factors;
- (c) the inclusion of one or more additional factors which will fairly represent the taxpayer's business activity in this state; or
- (d) the employment of any other method to effectuate an equitable allocation and apportionment of the taxpayer's income.

**History.** Acts 1961, No. 413, § 18; A.S.A. 1947, § 84-2072.

**Meaning of "this Act".** Acts 1961, No. 413, codified as 26-51-701 et seq.

### CASE NOTES

#### **Reporting Method.**

This section is permissive in terms of allowing a state to accept combined reporting; the Commissioner has the discretionary power to require or permit the apportionment on a combined basis of the income of a taxpayer that is part of a unitary business. *Leathers v. Jacuzzi, Inc.*, 326 Ark. 857, 935 S.W.2d 252 (1996).

Two corporate taxpayers held not entitled to file for a refund using the combined method, nor to file returns using the combined method, because they did not apply to the Commissioner to be permitted to use this method of accounting in accordance with this section. *Leathers v. Jacuzzi, Inc.*, 326 Ark. 857, 935 S.W.2d 252 (1996).

### **26-51-719. Construction.**

This Act shall be so construed as to effectuate its general purpose to make uniform the law of those states which enact it.

**History.** Acts 1961, No. 413, § 19; A.S.A. 1947, § 84-2073.

**Meaning of "this Act".** Acts 1961, No. 413, codified as 26-51-701 et seq.

**26-51-720. Severability.**

If any provision of this Act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable.

**History.** Acts 1961, No. 413, § 20; A.S.A. 1947, § 84-2073n.

**Meaning of "this Act".** Acts 1961, No. 413, codified as 26-51-701 et seq.

**Cross References.** General severability, § 1-2-205.

Severability of provisions of Code, § 1-2-117.

**26-51-721. Repealer.**

Any law or parts of laws in conflict with this Act are hereby repealed.

**History.** Acts 1961, No. 413, § 20; A.S.A. 1947, § 84-2073n.

**Meaning of "this Act".** Acts 1961, No. 413, codified as 26-51-701 et seq.

**26-51-722. Effective date.**

The provisions of this Act shall be applicable to all income earned or accrued in the income years, both calendar and fiscal, beginning on or after January 1, 1961.

**History.** Acts 1961, No. 413, § 22; A.S.A. 1947, § 84-2073n.

**Meaning of "this Act".** Acts 1961, No. 413, codified as 26-51-701 et seq.

**26-51-723. Legislative findings — Emergency.**

It is found and determined by the General Assembly that the laws of this state pertaining to the apportionment of income for income tax purposes derived from multi-state operations are in need of clarification in order that this state might derive its just taxes due from such income and that only by the immediate passage of this subchapter may such clarification be provided. Therefore, an emergency is declared to exist and this subchapter, being immediately necessary for the preservation of the public peace, health, and safety, shall be in full force and effect from and after its passage and approval.

**History.** Acts 1961, No. 413, § 23; A.S.A. 1947, § 84-2073n.

**A.C.R.C. Notes.** The official version of the Uniform Division of Income for Tax

Purposes Act drafted by the National Conference of Commissioners on Uniform State Laws does not contain a Section 23 or provide for an emergency adoption.

**SUBCHAPTER 8 — TAX RETURNS****SECTION.**

- 26-51-801. Returns by individuals.
- 26-51-802. Partnership returns.
- 26-51-803. Fiduciary returns.
- 26-51-804. Corporation returns.

**SECTION.**

- 26-51-805. Consolidated corporate returns.
- 26-51-806. Filing returns — Time and place — Forms.



## SECTION.

- 26-51-807. Filing returns — Extensions of time.  
 26-51-808. Failure to file return or include income — Return or supplemental return.  
 26-51-809. Receipts for taxes.  
 26-51-810. Forms provided to tax practitioners.  
 26-51-811. Information at source as to recipients of income.

## SECTION.

- 26-51-812. Withholding tax at source.  
 26-51-813. Reports and returns — Confidentiality — Exceptions.  
 26-51-814. Reports and returns — Preservation and destruction.  
 26-51-815. Computing capital gains and losses.  
 26-51-816. Signature document.

**Preambles.** Acts 1929, No. 118, contained a preamble which read: "Whereas, this State has been neglectful of its Wards in the Charitable Institutions, which is a disgrace to the people of a Great Commonwealth, and it is imperative that additional Revenue should be provided to correct the fearful conditions which now exist; and

"Whereas, an equalization Fund should be provided to give equal Educational opportunities to the Boys and Girls of our Rural Communities; and

"Whereas, Agricultural and Industrial development is now being retarded because of a policy to secure practically all of the Revenue from an Ad Valorem Tax, thus penalizing and discouraging ownership of property, while many who enjoy the benefits of Government and have large incomes, pay almost nothing to support the Government; Therefore..."

**Effective Dates.** Acts 1929, No. 118, § 44: approved Mar. 9, 1929. Emergency clause provided: "It is hereby ascertained and declared that the Hospital for Nervous Diseases is inadequate to properly care for all who should be confined therein, to the end there are many persons of unsound mind at large, who are a menace to the public safety, and that said Hospital as now equipped is inadequate to restrain those insane persons who are confined therein, so that there is danger of their escaping at any time and imperil the safety of the public; that there are hundreds and hundreds of persons desiring to enter the Tuberculosis Sanitarium who cannot now be accommodated there, because that institution has neither room, beds nor facilities for additional people, as a result said consumptives at large are spreading the disease amongst their fami-

lies and friends; that the funds to be raised by this Act will be used for the better care of the charitable wards of this State and to provide better for the rural schools of this State; and it is therefore ascertained and declared that it is necessary for the public peace, health and safety that this Act go into immediate operation, and accordingly it is provided that this act shall take effect and be in force from and after its passage."

Acts 1935, No. 23, § 3: approved Feb. 7, 1935. Emergency clause provided: "It being determined that this Act is necessary to better enforce the collection of Income Tax, and said act being necessary for the immediate preservation of the public peace, health and safety, an emergency is hereby declared to exist, and this act shall take effect and be in full force from and after its passage."

Acts 1937, No. 183, § 3: Mar. 3, 1937. Emergency clause provided: "It having been ascertained that much additional revenue will be collected by the State of Arkansas upon the passage of this Act, and it having been determined that this Act is necessary to better enforce the collection of Income Tax, which will result in increased financial benefits to the people of this State, an emergency is hereby declared to exist, and this Act being necessary for the immediate preservation of the public peace, health and safety, shall take effect and be in full force from and after its passage and approval."

Acts 1939, No. 140, § 8: Feb. 25, 1939. Emergency clause provided: "It having been ascertained that this Act is necessary to better enforce the collection of the Income Tax Law, which will result in increased financial benefits to the people of this State, an emergency is hereby

declared to exist, and this Act being necessary for the immediate preservation for the public peace, health and safety, shall take effect and be in full force from and after its passage and approval."

Acts 1947, No. 335, § 7, provided that it is declared to be the intention of the General Assembly that this act shall be applicable to the income year 1946, calendar or fiscal, and for each year thereafter.

Acts 1947, No. 335, § 8: Mar. 28, 1947. Emergency clause provided: "It has been ascertained by the Legislature that adjustments and revisions of the present income tax laws are necessary to correct the method of computing and reporting income to the State for purposes of taxation thereof and to facilitate the enforcement of present laws relating thereto, and this law being necessary to remedy this situation and to provide for the public peace, health and safety and well being, an emergency is hereby declared to exist and this Act shall be in full force and effect after its passage and approval."

Acts 1957, No. 20, § 4, provided that the provisions of this act shall be applicable to all income earned or accrued in the income years, both calendar and fiscal, beginning on and after January 1, 1957.

Acts 1957, No. 20, § 6: Feb. 7, 1957. Emergency clause provided: "It has been found and is hereby declared by the General Assembly of the State of Arkansas (1) that inflationary prices are having the effect of curtailing the activities of certain necessary agencies of the State Government, including the State Hospital and other eleemosynary institutions, the University of Arkansas and the other state supported institutions of higher learning, the Public School System, the Public Welfare Program, and others; (2) that a minimum program of operation of the said state agencies and activities requires a large amount of state funds in excess of the amounts estimated to be available under existing revenue laws; (3) that to fail to provide additional funds will have the effect of further curtailing the activities of said agencies and programs to the great detriment to all of the people of this State; and (4) that only the provisions of this act will provide funds in amounts sufficient to alleviate the aforementioned conditions. It has also been found and is hereby declared by the General Assembly that in order that the state agencies, ben-

eficiaries of the increased revenues hereunder, may properly plan their respective programs of operation, and that the Revenue Department may prepare and print the necessary income tax forms, and prepare, print and distribute the necessary instructions relative to the use of such forms, this act take effect without delay. Therefore, an emergency is hereby declared to exist, and this act being necessary for the preservation of the public peace, health and safety shall take effect and be in full force from and after the date of its passage and approval."

Acts 1968 (1st Ex. Sess.), No. 61, § 9: Feb. 27, 1968. Emergency clause provided: "It is hereby found and determined by the General Assembly that many employers in this State are required under the provisions of Act 132 of 1965 to withhold small amounts on a weekly, bi-weekly, semi-monthly, or monthly basis from the wages paid employees and to remit the same to the Commissioner of Revenues; that this places an undue burden upon the employer of withholding and reporting such income tax; and that to remove inequities and at the same time to insure the effective enforcement of the income tax and income tax withholding laws of this State, it is necessary that this Act become effective immediately. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety, shall be in full force and effect from and after its passage and approval."

Acts 1979, No. 114, § 2, provided that this act shall be applicable to the income year 1979, whether calendar or fiscal, and each year thereafter.

Acts 1979, No. 114, § 4: Feb. 13, 1979. Emergency clause provided: "It is hereby found that there is an inconsistency in the current State Income Tax Code such that persons who by law are not liable for tax due to the size of their incomes are nonetheless required to file tax returns; that this inconsistency results in a hardship upon those persons and a waste of public money and the time of public employees; that this situation should be corrected without delay in order that it not continue through another calendar year tax return filing period; therefore, an emergency is hereby declared to exist, and this Act being necessary to the public peace,



health and safety, shall take effect and be in full force from and after the date of its passage and approval."

Acts 1979, No. 708, § 8, provided that the provisions of the act should apply to all income tax years after December 31, 1976.

Acts 1979, No. 708, § 10: Apr. 2, 1979. Emergency clause provided: "It is hereby found and determined by the General Assembly that the clarification of the consolidated return statutes is needed to provide both an equitable manner for the taxation of corporations in an affiliated group and also to protect revenues, and that only by the immediate passage of this Act will these problems be corrected. Therefore, an emergency is declared to exist and this Act, being immediately necessary for the preservation of the public peace, welfare and safety, shall be in full force and effect from and after its passage and approval."

Acts 1981, No. 403, § 3: Jan. 1, 1982.

Acts 1983, No. 673, § 4: Mar. 22, 1983. Emergency clause provided: "It is hereby found and determined by the General Assembly that the Arkansas Student Loan Authority and the Student Loan Guarantee Foundation of Arkansas are charged with collecting student loan indebtedness and that in some cases those agencies are unable to locate persons who fail to make payment of their student loans; that all reasonable assistance should be given those agencies in locating persons who fail to repay student loans as agreed; that this Act is designed to aid those agencies in locating such persons by authorizing the Commissioner of Revenues to disclose to those agencies information concerning the last known address and/or last known employer of such persons. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1983, No. 832, § 3: Jan. 1, 1983.

Acts 1985 (1st Ex. Sess.), No. 20, § 4: June 26, 1985. Emergency clause provided: "It is hereby found and determined by the General Assembly that Act 848 of 1985 as it was finally enacted phases in over a three year period the federal capital gains treatment for Arkansas income tax purposes beginning in 1987; that it was intended that the federal capital loss provisions likewise not be implemented until

1987 but that intent was not articulated in Act 848; that Act 848 adopts the federal capital loss provisions immediately instead of 1987; that Act 848 becomes effective on June 28, 1985; and therefore this Act should be given immediate effect in order to make the technical correction in a timely manner and thereby avoid unintended consequences. Therefore an emergency is hereby declared to exist and this Act, being necessary for the preservation of the public peace, health and safety, shall be in full force and effect from and after its passage and approval."

Acts 1985 (1st Ex. Sess.), No. 32, § 4: June 26, 1985. Emergency clause provided: "It is hereby found and determined by the General Assembly that Act 848 of 1985 as it was finally enacted phases in over a three year period the federal capital gains treatment for Arkansas income tax purposes beginning in 1987; that it was intended that the federal capital loss provisions likewise not be implemented until 1987 but that intent was not articulated in Act 848; that Act 848 adopts the federal capital loss provisions immediately instead of 1987; that Act 848 becomes effective on June 28, 1985; and therefore this Act should be given immediate effect in order to make the technical correction in a timely manner and thereby avoid unintended consequences. Therefore an emergency is hereby declared to exist and this Act, being necessary for the preservation of the public peace, health and safety, shall be in full force and effect from and after its passage and approval."

Acts 1987, No. 35, § 4: Feb. 13, 1987. Emergency clause provided: "It is hereby found and determined by the General Assembly that the Arkansas Capital Gains Law becomes effective during calendar year 1987; that due to the present economic conditions the implementation should be postponed for two years; that this Act delays that implementation; and that this Act should go into effect immediately in order to prevent taxpayers from relying upon its becoming effective during calendar year 1987. Therefore, an emergency is hereby declared to exist and this Act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1987, No. 382, § 34: Mar. 24, 1987. Emergency clause provided: "It is hereby



found and determined by the General Assembly of the State of Arkansas that the federal government has recently made major changes in the federal income tax law; that for simplicity of administration and equity various provisions of the federal law should be adopted for Arkansas Income Tax purposes; and that for the effective administration of this Act, the Act should become effective immediately. Therefore an emergency is hereby declared to exist and this Act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1989, No. 826, § 36, provided that the provisions of that act shall be in full force and effect for all income years beginning on or after January 1, 1989.

Acts 1989, No. 933, § 5: Mar. 24, 1989. Emergency clause provided: "It is hereby found and determined by the General Assembly that the Arkansas Capital Gains Law becomes effective during calendar year 1989; that due to the present economic conditions that implementation should be postponed for two years; that this Act delays the implementation; and that this Act should go into effect immediately in order to prevent taxpayers from relying upon its becoming effective during calendar year 1989. Therefore, an emergency is hereby declared to exist and this Act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1991, No. 95, § 5, provided that the provisions contained in this act shall be effective for tax years beginning on and after January 1, 1991.

Acts 1991, No. 95, § 9: Feb. 11, 1991. Emergency clause provided: "It is hereby found and determined by the General Assembly that certain low income working taxpayers and senior citizens bear a disproportionate share of the state tax burden; that unless this act becomes effective immediately upon passage irreparable harm will occur to low income taxpayers of this state; and that this act should become effective immediately upon passage. Therefore, an emergency is hereby declared to exist and this Act being necessary for the preservation of the public peace, health and safety shall be in full

force and effect from and after its passage and approval."

Acts 1991, No. 685, § 11: Jan. 1, 1991.

Acts 1991, No. 882, § 2: Jan. 1, 1991.

Acts 1993, No. 785, § 24: Mar. 30, 1993.

Emergency clause provided: "It is hereby found and determined that certain changes are necessary to the Arkansas income tax laws; that these changes are necessary immediately in order to maintain the efficient administration of the Arkansas income tax laws; and that this act is necessary to effectuate that purpose. Therefore, an emergency is hereby declared to exist and this act being necessary for the preservation of public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1993, No. 1018, § 6: Apr. 12, 1993.

Emergency clause provided: "It is hereby found and determined by the General Assembly that the Arkansas Public Institutions of Higher Education are charged with collecting student indebtedness and that in some cases those institutions are unable to locate persons who fail to make payment of their student indebtedness; that all reasonable assistance should be given those agencies in locating persons who fail to pay or repay student tuition, fees, loans, and other student indebtedness; that this act is designed to aid those institutions in locating such persons by authorizing the Commissioner of Revenues to disclose to those agencies information concerning the last known address and/or last known employer of such persons. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1995, No. 1160, § 42: §§ 1, 2(a), and 3 through 13: applicable for taxable years beginning on or after January 1, 1995.

Acts 1995, No. 1160, § 46: Apr. 11, 1995. Emergency clause provided: "It is hereby found and determined by the General Assembly that certain changes are necessary to the Arkansas tax laws; that these changes are necessary immediately in order to maintain the efficient administration of the Arkansas income tax laws; and that this act is necessary to effectuate that purpose. Therefore, an emergency is

hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1997, No. 951, § 34: "Sections 1 through 24, 32 and 33 shall be effective for tax years beginning on and after January 1, 1997. However, it is the intent of this Act that those portions of the Internal Revenue Code adopted by this Act which for federal tax purposes do not become effective until some time after January 1, 1997, shall also not become effective for state tax purposes until the same time."

Acts 1997, No. 951, § 38: March 31, 1997. Emergency clause provided: "It is hereby found and determined by the General Assembly that current state tax laws are unclear or confusing, creating difficulty for taxpayers seeking to comply with these tax laws; that the changes made by Sections 25 through 31 of this bill are necessary to provide adequate direction to those taxpayers and to maintain the efficient administration of the Arkansas tax laws; and that the provisions of Sections 25 through 31 of this Act are necessary to effectuate that purpose. Therefore, an emergency is hereby declared to exist and the provisions of Sections 25 through 31 of this Act being necessary for the preservation of the public peace, health, and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, Sections 25 through 31 shall be-

come effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, Sections 25 through 31 shall become effective on the date the last house overrides the veto."

Acts 1999, No. 1005, § 2: effective for tax years beginning on and after January 1, 1999.

Acts 1999, No. 1126, § 43: effective for tax years beginning on or after January 1, 1999.

Acts 2003, No. 965, § 3: effective for tax years beginning on and after January 1, 2003.

Acts 2003, No. 774, § 6: effective for tax years beginning on or after January 1, 2003.

Acts 2005, No. 675, § 17: effective for tax years beginning on and after January 1, 2005.

Acts 2007, No. 369, § 4: effective for tax years beginning on or after January 1, 2007.

Acts 2011, No. 787, § 36, provided: "Subdivision (14)(B) of Section 12, subdivision (a)(1)(B) of Section 16, Section 17, Section 20, and Section 35 shall be effective for tax years beginning on and after January 1, 2010. Sections 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, subdivision (14)(A) of Section 12, Sections 13, 14, 15, subdivisions (a)(1)(A) and (a)(2) of Section 16, Sections 18, 19 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, and 34 shall be effective for tax years beginning on and after January 1, 2011."

## RESEARCH REFERENCES

**ALR.** State laws requiring public officials to protect confidentiality of income tax returns or information. 1 A.L.R.4th 959.

**Am. Jur.** 71 Am. Jur. 2d, State Tax., § 589 et seq.

**C.J.S.** 85 C.J.S., Tax., § 1102.

## 26-51-801. Returns by individuals.

(a) Every person owning property or doing business in the State of Arkansas shall file a return with the Director of the Department of Finance and Administration showing his or her gross income and the deductions or credits allowed by §§ 26-51-301, 26-51-302 [repealed], and 26-51-436 if he or she has a gross income of:

(1) Three thousand nine hundred ninety-nine dollars (\$3,999) if married and not filing jointly or married but living apart from the spouse at the end of the income year or on the date the spouse died;

(2) Seven thousand eight hundred dollars (\$7,800) if single and under sixty-five (65) years of age;

(3) Nine thousand three hundred dollars (\$9,300) if single and sixty-five (65) years of age or over;

(4) Twelve thousand one hundred dollars (\$12,100) if head of household and under sixty-five (65) years of age;

(5) Thirteen thousand dollars (\$13,000) if head of household and sixty-five (65) years of age or over;

(6) Fifteen thousand five hundred dollars (\$15,500) if married, filing jointly, and both spouses are under sixty-five (65) years of age;

(7) Fifteen thousand six hundred dollars (\$15,600) if married, filing jointly, and one (1) spouse is sixty-five (65) years of age or older;

(8) Sixteen thousand two hundred dollars (\$16,200) if married, filing jointly, and both spouses are sixty-five (65) years of age or over;

(9) Fifteen thousand five hundred dollars (\$15,500) if a qualifying widow or widower with a dependent child and under sixty-five (65) years of age; or

(10) Sixteen thousand dollars (\$16,000) if a qualifying widow or widower with a dependent child and sixty-five (65) years of age or over.

(b) If a husband and wife are living together and have an aggregate gross income of fifteen thousand five hundred dollars (\$15,500) or over, each shall make a return unless the income of each is included in a single joint return.

(c) If a taxpayer is unable to make his or her own return, the return shall be made by an authorized agent or by the guardian or other person charged with the care of the taxpayer or estate of the taxpayer.

(d) As used in this section:

(1) "Dependent" means the same as defined in 26 U.S.C. § 152, as in effect on January 1, 2007;

(2) "Head of household" means the same as defined in 26 U.S.C. § 2(b), as in effect on January 1, 2005;

(3) "Jointly" means filing a joint return; and

(4) "Qualifying widow or widower with a dependent child" means the "surviving spouse" as defined in 26 U.S.C. § 2(a), as in effect on January 1, 2005.

(e) If a person is not required to file a return, the person must complete and submit to his or her employer a statement to that effect on forms approved by the director in order to be exempt from the state withholding tax.

**History.** Acts 1929, No. 118, Art. 4, § 17; Pope's Dig., § 14040; Acts 1939, No. 140, § 2; 1947, No. 335, § 4; 1957, No. 20, § 3; 1979, No. 114, § 1; A.S.A. 1947, § 84-2022; Acts 1991, No. 95, § 1; 1999, No.

1131, § 1; 2005, No. 675, § 16; 2007, No. 218, § 35.

**A.C.R.C. Notes.** Section 26-501-302 referred to in subsection (a) of this section was repealed by Acts 2007, No. 195, § 2.



**26-51-802. Partnership returns.**

(a) A partnership shall be classified and taxed for Arkansas income tax purposes in the same manner as it is classified and taxed for federal income tax purposes.

(b)(1) Every partnership filing an Arkansas partnership return shall state specifically the items of its gross income and the deductions allowed by the Income Tax Act of 1929 and shall include in the return the names and addresses of individuals who would be entitled to share in the net income if distributed and the amount of the distributive share of each individual.

(2) The returns shall be sworn to by one (1) of the partners.

(c)(1) The provisions of § 26-51-702 are not applicable to partnerships filing Arkansas partnership returns.

(2) Subject to the provisions of § 26-51-202(e), all partnership income from activities within this state that is reflected on a partnership return shall be allocated to this state.

**History.** Acts 1929, No. 118, Art. 4, § 18; Pope's Dig., § 14041; A.S.A. 1947, § 84-2023; Acts 1993, No. 785, § 14; 1999, No. 1283, § 2; 2003, No. 965, § 2.

**Meaning of "Income Tax Act of 1929".** See note to § 26-51-101.

**RESEARCH REFERENCES**

**ALR.** State income tax treatment of partnerships and partners. 2 A.L.R.6th 1.

**26-51-803. Fiduciary returns.**

(a) Every fiduciary, except a receiver appointed by authority of law in possession of part only of the property of an individual, shall make return under oath for any individual trust or estate for whom he or she acts, when the returns are required by the provision of the Income Tax Act of 1929, and for every trust or estate when the beneficiary is a nonresident and shall state therein that he or she has sufficient knowledge of the affairs of the individual, trust, or estate for which return is made to enable him or her to make the return, and that the return is, to the best of his or her knowledge and belief, correct.

(b) Any fiduciary required to make returns under the Income Tax Act of 1929 shall be subject to all the provisions of the Income Tax Act of 1929 which apply to individuals.

**History.** Acts 1929, No. 118, Art. 4, § 19; Pope's Dig., § 14042; A.S.A. 1947, § 84-2024.

**Meaning of "Income Tax Act of 1929".** See note to § 26-51-101.

**26-51-804. Corporation returns.**

(a) Every corporation subject to taxation under the Income Tax Act of 1929 shall make a return stating specifically the items of its gross

income and the deductions and credits allowed by the Income Tax Act of 1929.

(b) The return shall be sworn to by the president, vice-president, treasurer, or other principal officer.

(c) If any foreign corporation has no office or place of business in this state but has an agent in this state, the returns shall be made by the agent.

(d) In case of a receiver, trustee in bankruptcy, or assignees operating the property or business of a corporation, the receiver, trustee, or assignees shall make returns for the corporation in the same manner and form as corporations are required to make returns, and any tax due on the basis of those returns shall be collected in the same manner as if collected from the corporations of whose business or property they have custody or control.

(e) Returns made under this section shall be subject to the provisions of the Income Tax Act of 1929.

**History.** Acts 1929, No. 118, Art. 4, § 20; Pope's Dig., § 14043; A.S.A. 1947, § 84-2025; Acts 1987, No. 114, § 1; 1987, No. 382, § 26.

**Publisher's Notes.** Acts 1987, No. 382, § 1, provided that this act shall be known and may be cited as the "Income Tax Act of 1987."

Acts 1987, No. 382, § 2, provided that the purpose of this act is to make technical amendments to the Income Tax Act of 1929, Acts 1929, No. 118, as amended, and to the Arkansas Tax Procedure Act, Acts 1979, No. 401, as amended, to make the Arkansas income tax and tax procedure statutes conform to several recent amendments to their counterparts in the federal income statutes, to eliminate procedural problems that have arisen since the enactment of these acts, and for other purposes.

Acts 1987, No. 382, § 32(e), provided that all other laws and parts of laws in conflict with this act are repealed for income years beginning on and after January 1, 1987.

Acts 1987, No. 382, § 33, provided that, except as provided in § 26-18-303(a)(2)(B) and (c), regarding confidentiality of tax returns and other tax information, which shall apply retroactively to any pending suit, action, or prosecution, administrative or judicial, for which no final judgment has been rendered by a court of competent jurisdiction and all future suits, actions, and prosecutions, the provisions of this act shall apply to income years beginning on and after January 1, 1987.

**Meaning of "Income Tax Act of 1929".** See note to § 26-51-101.

## CASE NOTES

### Income.

Corporation operating water and light plant in state and receiving income from stock owned by it in corporations operated

in another state is liable for the tax on both sources of income. *Wiseman v. Interstate Pub. Serv. Co.*, 191 Ark. 255, 85 S.W.2d 700 (1935).

## 26-51-805. Consolidated corporate returns.

(a)(1) All corporations which are eligible members of an affiliated group as that term is defined in 26 U.S.C. § 1504(a) and (b) as of January 1, 1989, which affiliated group files a federal consolidated corporate income tax return pursuant to 26 U.S.C. §§ 1501-1505 as of January 1, 1989, may elect to file a consolidated Arkansas corporate income tax return.

(2) However, only corporations in the affiliated group that have gross income from sources within the State of Arkansas that is subject to taxation under the provisions of the Income Tax Act of 1929, § 26-51-101 et seq., shall be eligible to file consolidated corporate income tax returns in Arkansas.

(b)(1) All corporations in the affiliated group which are eligible to file an Arkansas consolidated income tax return must consent to, and join in, the filing of the consolidated return prior to the last day for filing the return, as may be extended.

(2) The making of the consolidated income tax return shall be deemed as consent of each eligible corporation in the affiliated group.

(c) When filing an Arkansas consolidated corporate income tax return, a complete copy of the federal consolidated corporate income tax return filed with the federal Internal Revenue Service for that taxable year must be attached to the Arkansas return.

(d)(1) The election to file an Arkansas consolidated corporate income tax return for any income year shall require the filing of consolidated corporate income tax returns for all subsequent income years so long as the individual corporations remain members of the affiliated group unless the Director of the Department of Finance and Administration consents to the filing of separate returns by any members of the affiliated group.

(2) However, in the event that the General Assembly amends or supplements the Income Tax Act of 1929, § 26-51-101 et seq., in a manner which would substantially alter the method of allocating or apportioning net income or loss subject to the Income Tax Act of 1929, § 26-51-101 et seq., or in computing the tax due from the affiliated group, then the affiliated group may revoke the election to file an Arkansas consolidated corporate income tax return effective for the income year to which any such change to the Income Tax Act of 1929, § 26-51-101 et seq., is effective.

(e) In any case of two (2) or more corporations, whether or not affiliated, owned, or controlled directly or indirectly by the same interests, the director may distribute, apportion, or allocate gross income, deductions, credits, or allowances between or among such corporations if he or she determines that the distribution, apportionment, or allocation is necessary in order to prevent evasion of taxes or clearly to reflect the income to any such corporation. This subsection is based upon the concept of 26 U.S.C. § 482 as of January 1, 1989, as that section applies to corporations.

(f) In computing Arkansas consolidated taxable income or loss to which the tax rate is applied, the separate net income or loss of each corporation which is entitled to be included in the affiliated group shall be included in the consolidated net income or loss to the extent that its net income or loss is separately apportioned or allocated to the State of Arkansas in accordance with the provisions of the Uniform Division of Income for Tax Purposes Act, § 26-51-701 et seq.

(g) This section is specifically designed to clarify the filing of consolidated corporate income tax returns with the Revenue Division of the



Department of Finance and Administration and is to amend the Income Tax Act of 1929, § 26-51-101 et seq. This section is based upon the concept of filing federal consolidated income tax returns.

**History.** Acts 1979, No. 708, §§ 1-6; A.S.A. 1947, §§ 84-2025.1 — 84-2025.6; Acts 1989, No. 826, §§ 33, 34.

**Publisher's Notes.** Acts 1989, No. 826,

§ 1, provided that this act shall be known and may be cited as the "Arkansas Income Tax Technical Revenue Act of 1989".

## CASE NOTES

### ANALYSIS

Construction.  
Charitable Contributions.

#### Construction.

This section does not mandate the filing of a combined return or the filing of any specific type of return. *Leathers v. Jacuzzi, Inc.*, 326 Ark. 857, 935 S.W.2d 252 (1996).

#### Charitable Contributions.

The legislative intent is to follow the federal concept of allowing deductions for charitable contributions to be taken at the consolidated-entity level; this section does not require that charitable contributions be deducted at the individual level by the separate corporations before a consolidated tax return is filed. *Central & S. Cos. v. Weiss*, 339 Ark. 76, 3 S.W.3d 294 (1999).

## 26-51-806. Filing returns — Time and place — Forms.

(a)(1) Returns shall be in such form as the Director of the Department of Finance and Administration may prescribe from time to time and shall be filed with the director's office at Little Rock.

(2) Returns for all income taxes other than corporation income tax, cooperative associations, and exempt organizations shall be filed as follows:

(A) If covering the preceding calendar year, on or before April 15;  
or

(B) If covering a fiscal year, on or before the expiration of three and one-half (3½) months after the closing date of the period covered.

(3) Returns for corporation income tax shall be filed as follows:

(A) If covering the preceding calendar year, on or before March 15;  
or

(B) If covering a fiscal year, on or before the expiration of two and one-half (2½) months after the closing date of the period covered.

(4)(A) Returns for cooperative association income tax shall be filed as follows:

(i) If covering the preceding calendar year, on or before September 15; or

(ii) If covering a fiscal year, on or before the expiration of eight and one-half (8½) months after the closing date of the period covered.

(B) As used in this section, "cooperative association" means a cooperative association as described in § 26 U.S.C. § 1381(a) as in effect on January 1, 2003.

(5)(A) Returns for an exempt organization that is required to file an income tax return shall be filed as follows:

(i) If covering the preceding calendar year, on or before May 15; or

(ii) If covering a fiscal year, on or before the expiration of four and one-half (4½) months after the closing date of the period covered.

(B) As used in this section, "exempt organization" means an organization as described in § 26-51-303.

(b)(1) The director shall cause to be prepared blank forms for the returns and shall cause them to be furnished upon application, but failure to receive or secure the forms shall not relieve any taxpayer from the obligation of making any return required by the Income Tax Act of 1929.

(2) As far as possible and practicable for filing returns for income tax, the director shall use the same form of blanks as is used by the United States down to the net income part of the form.

(c)(1) In filing an income tax return in the State of Arkansas, a taxpayer shall not be required to execute any affidavit or other statement under oath, but shall make the following statement, which shall be annexed to the return:

"I declare, under the penalties of perjury, that the foregoing statements are true to the best of my knowledge and belief and that all my .... income is reported hereon."

(Year)

(2) The statement shall be signed by the taxpayer filing the return.

(d)(1) Every corporation filing a return under the Income Tax Act of 1929 shall attach to the return a completed copy of its federal tax return for the same income year, including all schedules and attachments.

(2) As used in this subsection, "corporation" means a Subchapter C corporation as defined in 26 U.S.C. § 1361(a), in effect January 1, 1989.

**History.** Acts 1929, No. 118, Art. 4, § 22; 1929, No. 118, Art. 9, § 43; 1935, No. 23, § 1; 1937, No. 183, § 1; Pope's Dig., §§ 14045, 14066; Acts 1947, No. 158, § 1; 1979, No. 600, § 1; 1981, No. 403, § 1; A.S.A. 1947, §§ 84-2027, 84-2028, 84-2048; Acts 1989, No. 826, § 7; 2003, No. 774, § 2; 2007, No. 369, §§ 3, 4.

**Publisher's Notes.** As to the short title of Acts 1989, No. 826, see Publisher's Notes, § 26-51-805.

As to the effective date of Acts 1989, No. 826, see Publisher's Notes, § 26-51-805.

**Meaning of "Income Tax Act of 1929".** See note to § 26-51-101.

## CASE NOTES

### Construction.

The adoption, for convenience, of the same blank forms certainly does not mean that the state also adopts the federal income tax law in its entirety. *F & M Bank*

*v. Skelton*, 266 Ark. 680, 587 S.W.2d 561 (1979).

**Cited:** *Collins v. Humphrey*, 181 Ark. 609, 27 S.W.2d 102 (1930); *Taylor v. Par-tain*, 267 Ark. 476, 591 S.W.2d 653 (1980).

## 26-51-807. Filing returns — Extensions of time.

(a)(1) Any person who requests an automatic extension of time for filing a federal income tax return and who attaches a copy of the request to the corresponding state income tax return shall be granted an extension of time until the due date of the federal income tax return to file the corresponding state income tax return.

(2) Any person who receives an extension of time for filing a federal income tax return in addition to an automatic extension, and who attaches a copy of the document granting the federal extension to the corresponding state income tax return, shall be granted an extension of time until the due date of the federal income tax return to file the corresponding state income tax return.

(b)(1) The Director of the Department of Finance and Administration shall assess the taxpayer interest at the rate of ten percent (10%) per annum on the amount of tax finally determined to be due.

(2)(A)(i) The interest on income tax other than corporation income tax may be computed from April 16 if the return covers the preceding calendar year.

(ii) If the return covers a fiscal year, interest shall be computed from the day following the expiration of three and one-half (3½) months after the closing date of the period covered.

(B) The interest on corporation income tax shall be computed as follows:

(i) If the return covers a calendar year, from March 16; or

(ii) If the return covers a fiscal year, from the day following the expiration of two and one-half (2½) months after the closing date of the period covered.

(c) The director may grant a taxpayer's written request to extend the time for filing a corporation income tax return for a period of time not to exceed sixty (60) days in addition to the extensions provided in subsection (a) of this section that correspond to the extensions for filing a federal return.

(d) The director may promulgate regulations granting automatic extensions of time to file income tax returns and information returns without the taxpayer being required to submit a written application, a copy of the federal request for extension, or a copy of the document granting the federal extension if the director determines that such requirements are unnecessary for the administration of the income tax laws.

**History.** Acts 1929, No. 118, Art. 4, 832, § 1; A.S.A. 1947, § 84-2027; Acts § 22; 1935, No. 23, § 1; 1937, No. 183, 1991, No. 685, § 9; 2003, No. 774, § 3; § 1; Pope's Dig., § 14045; Acts 1979, No. 2007, No. 369, § 2. 600, § 1; 1981, No. 403, § 1; 1983, No.

#### CASE NOTES

**Cited:** *Collins v. Humphrey*, 181 Ark. 609, 27 S.W.2d 102 (1930); *Taylor v. Par-tain*, 267 Ark. 476, 591 S.W.2d 653 (1980).

#### **26-51-808. Failure to file return or include income — Return or supplemental return.**

(a) If the Director of the Department of Finance and Administration shall be of the opinion that any taxpayer has failed to file a return or



failed to include in a return filed, either intentionally or through error, items of taxable income, the director may require from the taxpayer a return or a supplementary return, under oath, in such form as he or she shall prescribe, of all the items of income which the taxpayer received during the year for which the return is made, whether or not taxable under the provisions of the Income Tax Act of 1929.

(b) If from a supplementary return or otherwise, the Director of the Department of Finance and Administration finds that any items of income taxable under the Income Tax Act of 1929 have been omitted from the original return, he or she may require the items so omitted to be disclosed to him or her, under oath of the taxpayer, and to be added to the original return.

(c) Such supplementary return and the correction of original shall not relieve the taxpayer from any of the penalties to which he or she may be liable under any provision of the Income Tax Act of 1929.

**History.** Acts 1929, No. 118, Art. 4, § 23; Pope's Dig., § 14046; A.S.A. 1947, § 84-2029. **Meaning of "Income Tax Act of 1929".** See note to § 26-51-101.

### CASE NOTES

#### Errors.

The Arkansas tax laws provide ample opportunity for a taxpayer to establish the

error of any tax assessment. *Stuart v. Department of Fin. & Admin.*, 598 F.2d 1115 (8th Cir. 1979).

### 26-51-809. Receipts for taxes.

The Director of the Department of Finance and Administration shall give to any person making any payment a full written or printed receipt stating the amount paid and the particular account for which the payment was made and show for which installment it is paid.

**History.** Acts 1929, No. 118, Art. 8, § 36; Pope's Dig., § 14059; A.S.A. 1947, § 84-2042.

### 26-51-810. Forms provided to tax practitioners.

(a) The Director of the Department of Finance and Administration may impose a postage fee sufficient to defray the cost of postage for mailing out tax forms to tax practitioners.

(b) A tax practitioner is any person, partnership, limited liability company, or corporation who compiles a tax return for hire.

**History.** Acts 1968 (1st Ex. Sess.), No. 61, § 5; A.S.A. 1947, § 84-2027.1; Acts 1995, No. 1160, § 25.

**Publisher's Notes.** Acts 1968 (1st Ex.

Sess.), No. 61, § 5, formerly was compiled as A.S.A. 1947, § 84-2079.7, before being transferred to become A.S.A. 1947, § 84-2027.1.

**26-51-811. Information at source as to recipients of income.**

(a)(1) Every individual, partnership, limited liability company, corporation, joint-stock company or association, or insurance company, being a resident or having a place of business in this state; members of a partnership or employees in whatever capacity acting, including lessees or mortgagees, of real or personal property; members or managers of limited liability companies or employees in whatever capacity acting; fiduciaries; employers and all officers and employees of this state, or of any political subdivision of this state, having the control, receipt, custody, disposal, or payment of interest, rent, salaries, wages, premiums, annuities, compensations, remunerations, emoluments, or other fixed or determinable annual or periodical gains, profits, and income amounting to two thousand five hundred dollars (\$2,500) or over, paid or payable during any year to any taxpayer shall make complete returns under oath to the Director of the Department of Finance and Administration, under such regulations and in such form and manner and to such extent as may be prescribed by the director with the approval of the Governor.

(2) Unless the income is so reported, the director may disallow such payments as deductions or credits in computing the tax of the payer.

(b) The returns may be required, regardless of amounts:

(1) In the case of payments of interest upon bonds, mortgages, deeds of trust, or other similar obligations of corporations; and

(2) In the case of dividends paid by corporations.

(c) When necessary to make effective the provisions of this section, the name and address of the recipient of income shall be furnished upon demand of the person paying the income.

(d) The provisions of this section shall not apply to the payment of interest obligations not taxable under the Income Tax Act of 1929.

**History.** Acts 1929, No. 118, Art. 4, § 21; Pope's Dig., § 14044; Acts 1939, No. 140, § 3; 1947, No. 335, § 2; A.S.A. 1947, § 84-2026; Acts 1995, No. 1160, § 18.

**Meaning of "Income Tax Act of 1929".** See note to § 26-51-101.

**26-51-812. Withholding tax at source.**

(a) The Director of the Department of Finance and Administration, whenever he or she deems it necessary to ensure compliance with the provisions of the Income Tax Act of 1929, may, under rules and regulations prescribed by him or her, require any individual, partnership, limited liability company, corporation, joint-stock company, or association, including lessees or mortgagors and employees of the state or of any political subdivision of the state having control, receipt, custody, disposal, or payment of interest, other than interest coupons payable to bearer, rent, salaries, wages, premiums, compensation, remunerations, emoluments, or other fixed or determinable annual or periodical gains, profits, and income paid or payable to any taxpayer, to

deduct and withhold the tax due from the taxpayer and make return thereof and pay the tax to the director.

(b)(1) Upon the giving of notice by the director to the fiduciary of an estate or trust that the taxes due under the Income Tax Act of 1929 from the grantor or beneficiary of an estate or trust on income of the estate or trust, which is taxable to the grantor or beneficiary under the provisions of § 26-51-201, have not been paid, the fiduciary shall withhold the amount of the taxes from any payments or distribution due or to become due from the estate or trust to the grantor or beneficiary and transmit the amount so withheld to the director.

(2) The notice required in this section is to be served on the fiduciary or other person named above by registered mail, the letter to be directed to the last known address of the fiduciary or other person so named above, as the address appears in the records of the director.

(3) Any person failing or refusing to deduct and withhold the tax due from any taxpayer as required by the director pursuant to this section shall be personally liable for such tax, and the director may proceed against him or her as provided for in § 27 [repealed] of the Income Tax Act of 1929.

(c) The provisions of this section shall not apply to the payment of interest obligations not taxable under the Income Tax Act of 1929.

**History.** Acts 1929, No. 118, Art. 4, § 21; Pope's Dig., § 14044; Acts 1939, No. 140, § 3; 1947, No. 335, § 2; A.S.A. 1947, § 84-2026; Acts 1995, No. 1160, § 19.

**Publisher's Notes.** Acts 1947, No. 335, § 7, provided that it is declared to be the

intention of the General Assembly that this act shall be applicable to the income year 1946, calendar or fiscal, and for each year thereafter.

**Meaning of "Income Tax Act of 1929".** See note to § 26-51-101.

### **26-51-813. Reports and returns — Confidentiality — Exceptions.**

(a) It shall be unlawful for the Department of Finance and Administration or any other public official or employee to divulge or otherwise make known in any manner any particulars set forth or disclosed in any report or return required by the Income Tax Act of 1929 or any information concerning the taxpayer's affairs acquired from the taxpayer's records, officers, or employees while examining or auditing any taxpayer's liability for taxes imposed under the Income Tax Act of 1929, except:

(1) In connection with a proceeding involving taxes due under the Income Tax Act of 1929 from the taxpayer making the return; and

(2) In the manner and for the purposes prescribed in this section, the Arkansas Tax Procedure Act, § 26-18-101 et seq., and §§ 26-5-107, 26-5-108, 26-51-910, 26-52-105, 26-52-302, 26-52-303, 26-52-509, and 26-59-111.

(b) The Director of the Department of Finance and Administration may furnish a copy of any taxpayer's return to any official of the United States or of any state having duties to perform in respect to the assessment or collection of any tax imposed upon or measured by income if the taxpayer is required by the laws of the United States or of



the state to make a return in the United States or that state and if the laws of the United States or of the state provide substantially for the same secrecy in respect to the information revealed by the taxpayer's return as is provided by Arkansas laws.

(c) The director and all other public officials and employees shall keep and maintain the same secrecy in respect to any information furnished by any department, commission, or official of the United States or of any other state in respect to the income of any person as is required by the Income Tax Act of 1929 in respect to information concerning the affairs of the taxpayer under the Income Tax Act of 1929.

(d) Nothing in this section shall be construed to prohibit the department from publishing statistics so classified as not to disclose the identity of a particular return or report and the items of the return or report, or the inspection by the Attorney General or other legal representatives of this state of the return or report of any taxpayer who shall bring action to set aside or review the tax paid on the return or report or against whom an action or proceeding is necessary to recover any tax or any penalty imposed by the Income Tax Act of 1929.

(e)(1) Nothing in this section shall be construed to prohibit the Department of Finance and Administration from disclosing from any return or other record maintained by the director to the Office of Child Support Enforcement of the Revenue Division of the Department of Finance and Administration the last known address or whereabouts or the last known employer of any deserting parent from whom the office is charged with collecting child support.

(2) In providing this information, the Department of Finance and Administration shall not allow the office to examine the tax return, except that the Department of Finance and Administration shall disclose the taxpayer's tax return, personal and business, when compelled by an order of any Arkansas circuit court or the Supreme Court in any case or controversy before that court.

(f)(1) Nothing in this section shall be construed to prohibit the Department of Finance and Administration from disclosing from any return or other record maintained by the director to the Arkansas Student Loan Authority or the Student Loan Guarantee Foundation of Arkansas, the last known address or whereabouts or the last known employer of any person from whom the Arkansas Student Loan Authority and the Student Loan Guarantee Foundation of Arkansas are charged with collecting a student loan indebtedness.

(2) In providing this information the Department of Finance and Administration shall not allow the Arkansas Student Loan Authority or the Student Loan Guarantee Foundation of Arkansas to examine the tax return.

(g)(1) Nothing in this section shall be construed to prohibit the Department of Finance and Administration from disclosing from any return or other record maintained by the director to the Department of Higher Education or any Arkansas public institution of higher education the last known address or whereabouts or the last known employer

of any person from whom these institutions are charged with collecting student indebtedness.

(2) In providing this information, the Department of Finance and Administration shall not allow the Department of Higher Education or the Arkansas public institutions of higher education to examine the tax return.

**History.** Acts 1929, No. 118, Art. 8, § 40; Pope's Dig., § 14063; Acts 1939, No. 38, § 1; 1947, No. 335, § 1; 1981, No. 903, § 1; 1983, No. 673, § 1; A.S.A. 1947, § 84-2046; Acts 1993, No. 1018, § 1; 1995, No. 1184, § 37; 2007, No. 827, § 219.

**Meaning of "Income Tax Act of 1929".** See note to § 26-51-101.

## RESEARCH REFERENCES

**Ark. L. Rev.** Watkins, Access to Public Records Under the Arkansas Freedom of Information Act, 38 Ark. L. Rev. 741.

### 26-51-814. Reports and returns — Preservation and destruction.

All reports and returns required by the Income Tax Act of 1929 shall be preserved for three (3) years and thereafter until the Director of the Department of Finance and Administration orders them destroyed.

**History.** Acts 1929, No. 118, Art. 8, § 40; Pope's Dig., § 14063; Acts 1983, No. 673, § 1; A.S.A. 1947, § 84-2046.

**Meaning of "Income Tax Act of 1929".** See note to § 26-51-101.

### 26-51-815. Computing capital gains and losses.

(a)(1)(A) To the extent they apply to capital gains and losses realized or incurred during income years beginning after December 31, 1996, 26 U.S.C. §§ 1211-1231, 1232 [repealed], 1232A [repealed], 1232B [repealed], 1233-1237, 1239, 1240 [repealed], 1241-1245, 1246 [repealed], 1247 [repealed], 1248-1250, 1251 [repealed], and 1252-1257, as in effect on January 1, 2011, and the regulations of the Secretary of the Treasury promulgated under 26 U.S.C. §§ 1211-1231, 1232 [repealed], 1232A [repealed], 1232B [repealed], 1233-1237, 1239, 1240 [repealed], 1241-1245, 1246 [repealed], 1247 [repealed], 1248-1250, 1251 [repealed], and 1252-1257, as in effect on January 1, 2011, are adopted for the purpose of computing tax liability under the Income Tax Act of 1929, § 26-51-101 et seq.

(B) However, the provisions of this section shall not apply to a C corporation as defined in 26 U.S.C. § 1361, as in effect on January 1, 2011.

(2) Furthermore, any other provisions of the federal income tax law and regulations necessary for interpreting and implementing 26 U.S.C. §§ 1211-1231, 1232 [repealed], 1232A [repealed], 1232B [repealed], 1233-1237, 1239, 1240 [repealed], 1241-1245, 1246 [repealed], 1247 [repealed], 1248-1250, 1251 [repealed], and 1252-1257 are adopted to that extent and as in effect on January 1, 2007.

(b) If a taxpayer has a net capital gain for tax years beginning on and after January 1, 1999, thirty percent (30%) of the gain shall be exempt from state income tax.

(c) Title 26 U.S.C. § 1202, as in effect on January 1, 1995, regarding the exclusion from gain of certain small business stock, is adopted for the purpose of computing Arkansas income tax liability.

(d)(1) If a taxpayer has a net capital gain from a venture capital investment, one hundred percent (100%) of the gain shall be exempt from the Income Tax Act of 1929, § 26-51-101 et seq., if:

(A) The venture capital investment was initially made on or after January 1, 2001; and

(B) The venture capital investment was held for at least five (5) years prior to disposition.

(2)(A) "Venture capital" means equity financing, broadly defined, including early stage research, development, commercialization, seed capital for startup enterprises, and other risk capital for expansion of entrepreneurial enterprises doing business in Arkansas that are:

(i) Qualified technology-based enterprises doing business in Arkansas;

(ii) Qualified biotechnology enterprises doing business in Arkansas; or

(iii) Qualified technology incubator clients doing business in Arkansas.

(B) "Venture capital" does not include the purchase of a share of stock in a company if, on the date on which the share of stock is purchased, the company has securities outstanding that are:

(i) Registered on a national securities exchange under § 12(b) of Title I of the Securities Exchange Act of 1934, 15 U.S.C. § 78l, as it exists on January 1, 2001;

(ii) Registered or required to be registered under § 12(g) of Title I of the Securities Exchange Act of 1934, 15 U.S.C. § 78l, as it exists on January 1, 2001; or

(iii) Required to be registered except for the exemptions in § 12(g)(2) of Title I of the Securities Exchange Act of 1934, 15 U.S.C. § 78l, as it exists on January 1, 2001.

(C) "Qualified biotechnology enterprise" means a corporation, partnership, limited liability company, sole proprietorship, or other entity that is certified by the Arkansas Economic Development Commission pursuant to § 2-8-108 [repealed].

(D) "Qualified technology incubator" means a business incubator certified by the Board of Directors of the Arkansas Science and Technology Authority as being a facility operated in cooperation with an Arkansas college or university to foster the growth of technology-based enterprises.

(E) "Qualified technology incubator client" means a corporation, partnership, limited liability company, sole proprietorship, or other entity that, as of the date of the venture capital investment, is certified by an Arkansas college or university as currently receiving,



or having received within the previous three (3) years, the services of a qualified technology incubator.

(F) "Qualified technology-based enterprise" means a corporation, partnership, limited liability company, sole proprietorship, or other legal entity whose primary business directly involves commercializing the results of research in fields having long-term economic or commercial value to the state and having been identified in the research and development plan approved by the board.

**History.** Acts 1929, No. 118, §§ 45, 46, as added by 1985, No. 848, § 1; 1985 (1st Ex. Sess.), No. 20, § 1; 1985 (1st Ex. Sess.), No. 32, § 1; A.S.A. 1947, §§ 84-2048.1, 84-2048.2; Acts 1987, No. 35, § 2; 1989, No. 933, § 2; 1991, No. 882, § 1; 1995, No. 1160, § 9; 1997, No. 951, § 16; 1999, No. 1005, § 1; 1999, No. 1126, § 39; 2001, No. 1584, § 1; 2003, No. 857, § 1; 2007, No. 218, § 36; 2011, No. 787, § 34.

**A.C.R.C. Notes.** Acts 1989, No. 933, § 1, provided "It is hereby found and determined by the General Assembly that the United States Congress is anticipated to adopt special treatment for capital gains income for federal income tax purposes, and that it is in the best interest of this State for the General Assembly to enact a capital gains law to parallel the federal capital gains law as soon as the

United States Congress takes such action. Therefore, in order to timely implement a capital gains law to synchronize with the federal capital gains law, the Governor is hereby requested to include a capital gains proposal in his call for the first Special Session of the Arkansas General Assembly which occurs after the United States Congress enacts a law addressing capital gains treatment under the federal Internal Revenue Code."

Section 2-8-108 referred to in subdivision (d)(2)(C) of this section was repealed by Acts 2009, No. 716, §1.

**Amendments.** The 2011 amendment substituted "January 1, 2011" for "January 1, 2007" twice in (a)(1)(A); and substituted "January 1, 2011" for "January 1, 1997" in (a)(1)(B).

## RESEARCH REFERENCES

**Ark. L. Rev. Comment:** The Venture Capital Investment Act of 2001: Arkansas's Vision for Economic Growth, 56 Ark. L. Rev. 397.

**U. Ark. Little Rock L.J.** Legislative

Survey, Taxation, 8 U. Ark. Little Rock L.J. 601.

Survey of Legislation, 2001 Arkansas General Assembly, Tax Law, 24 U. Ark. Little Rock L. Rev. 613.

## 26-51-816. Signature document.

(a) The Director of the Department of Finance and Administration may require the originator, transmitter, or paid preparer of an electronically filed Arkansas income tax return to retain the signature document, form AR8453, as well as all other forms and schedules which support the return.

(b) Supporting forms and schedules which should be attached to the signature document include, but are not limited to, the following:

- (1) Form W-2;
- (2) Form 1099;
- (3) Form AR1000EC;
- (4) Form AR1000DC;
- (5) Form AR1000RC5; and

(6) Any other documents or schedules that require the taxpayer's signature.

(c) The signature document and all supporting documents for an electronically filed Arkansas return must be made available for inspection by the director upon the director's request.

(d) The director may promulgate rules and regulations for the proper enforcement of this section.

**History.** Acts 1999, No. 1132, § 7.

## SUBCHAPTER 9 — ARKANSAS INCOME TAX WITHHOLDING ACT OF 1965

### SECTION.

- 26-51-901. Title.
- 26-51-902. Definitions.
- 26-51-903. Subchapter supplemental.
- 26-51-904. Rules and regulations — Forms.
- 26-51-905. Withholding of tax.
- 26-51-906. Withholding state income taxes of federal employees by federal agencies.
- 26-51-907. Withholding tables.
- 26-51-908. Employer's return and payment of taxes withheld.
- 26-51-909. Annual withholding statement.
- 26-51-910. Refunds to employer for overpayment.

### SECTION.

- 26-51-911. Declaration of estimated tax.
- 26-51-912. Minimum estimated tax.
- 26-51-913. Payment of estimated tax.
- 26-51-914. Furnishing exemption certificate to employer.
- 26-51-915. Deposits of payments — Refunds.
- 26-51-916. Employer liable for amounts required to be withheld — Exceptions.
- 26-51-917. Employer's withholding account number.
- 26-51-918. Withholding — Deferred income.
- 26-51-919. Pass-through entities.

**Effective Dates.** Acts 1965, No. 132, §§ 24, 27; Jan. 1, 1966. Emergency clause provided: "It is hereby found and determined by the General Assembly that the establishment of the State income tax withholding system provided for in this Act necessitates a great deal of advance planning and preparation by the Commissioner and the Department of Revenues; that it is essential to the proper initiation and administration of the withholding system provided for herein that the Commissioner of Revenues promulgate rules and regulations, prescribe forms and procure the printing of the same, and take bids upon and purchase equipment and supplies necessary therefor; and that it is necessary that this Act take effect immediately in order that the Commissioner and the Department of Revenues may commence such planning and preparation and may take bids upon and negotiate the purchase of the equipment and supplies necessary to effectively initiate said withholding system on January 1, 1966. Therefore, an emergency is hereby de-

clared to exist and this Act being necessary for the immediate preservation of the public peace, health, and safety, shall be in effect from the date of its passage and approval." Approved March 1, 1965.

Acts 1965 (1st Ex. Sess.), No. 5, § 12: June 3, 1965. Emergency clause provided: "It is hereby provided that the provisions of this Act shall take effect with the beginning of the fiscal year on July 1, 1965; provided, however, that because of the necessity of making certain provisions of this Act effective immediately, particularly with respect to the funds provided for construction, new improvements and educational purposes, and only the provisions of this Act will make these benefits possible; now, therefore, it has been found and is hereby declared by the General Assembly of the State of Arkansas that it is imperative that this Act become effective immediately. Therefore, an emergency is hereby declared to exist, and this Act being necessary for the preservation of the public peace, health and safety shall take effect and be in full force from and after its passage and approval."

Acts 1967, No. 13, § 2: Jan. 26, 1967. Emergency clause provided: "It is hereby found and determined by the General Assembly that the State Income Tax Withholding Law included a provision authorizing farmers to file a declaration and pay the estimated tax on or before the 15th day of the second month after close of income year, but did not include a provision comparable to the Federal law authorizing farmers to file a return and pay the tax one month later than the final date for filing the declaration, in lieu of filing a declaration and paying the estimated tax, and, that the failure to include such provision in the Arkansas Income Tax Withholding Law has resulted in an undue burden on the farmers of this State which should be relieved immediately, and that this Act is designed to relieve this burden. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in effect from the date of its passage and approval."

Acts 1967, No. 15, § 3: Jan. 26, 1967. Emergency clause provided: "It is hereby found and determined by the General Assembly that under the Arkansas Income Tax Act of 1965, and the administrative rules and regulations promulgated pursuant thereto, some agricultural employers are required to withhold from wages and compensation paid to agricultural laborers; that withholding is not required on compensation paid for agricultural labor under the Federal Income Tax Law; and that the said requirement under the Arkansas law and regulations creates an undue burden upon agricultural employers in this State, which should be removed immediately. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in effect from the date of its passage and approval."

Acts 1967, No. 105, § 3: approved Feb. 17, 1967. Emergency clause provided: "There is a possibility that the 66th General Assembly will be extended, in which event considerable confusion could evolve concerning the effective date of legislation which does not contain an emergency clause. Therefore, an emergency is hereby declared and this act shall be in effect from and after the date of passage."

Acts 1967, No. 636, § 7: Apr. 6, 1967. Emergency clause provided: "It is hereby found and determined by the General Assembly that a number of inequities exist in the Arkansas Income Tax Withholding Act of 1965 and that the immediate passage of this Act is necessary to correct such inequities and to expedite the enforcement of such law. Therefore, an emergency is hereby declared to exist and this Act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1968 (1st Ex. Sess.), No. 61, § 9: Feb. 27, 1968. Emergency clause provided: "It is hereby found and determined by the General Assembly that many employers in this State are required under the provisions of Act 132 of 1965 to withhold small amounts on a weekly, bi-weekly, semi-monthly, or monthly basis from the wages paid employees and to remit the same to the Commissioner of Revenues; that this places an undue burden upon the employer of withholding and reporting such income tax; and that to remove inequities and at the same time to insure the effective enforcement of the income tax and income tax withholding laws of this State, it is necessary that this Act become effective immediately. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety, shall be in full force and effect from and after its passage and approval."

Acts 1969, No. 122, § 5: Jan. 1, 1969. Emergency clause provided: "It is hereby found and determined by the General Assembly that the present classification of employers as Quarterly and Annual is too low; that such classification works a hardship on small employers; that the present penalty is excessive to the point of being punitive; and that in order to remedy this situation, it is necessary that this Act become effective immediately. Therefore, an emergency is hereby declared to exist and this Act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after January 1, 1969."

Acts 1979, No. 401, § 50: Jan. 1, 1980.

Acts 1981, No. 917, § 3: Mar. 30, 1981. Emergency clause provided: "It is hereby found and determined by the General As-



sembly that many active armed forces personnel are failing to estimate their income tax liability and/or repay their income tax when due; that the Tax Reform Act of 1976 has authorized the armed forces' disbursing offices to withhold state income taxes of their personnel, that necessary agreements have been made with the Department of the Treasury to effect withholding; that under Arkansas law withholding has not been authorized and a significant loss in revenue has been experienced. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in effect from the date of its passage and approval."

Acts 1983, No. 831, § 3, provided that this act shall be in effect for income year 1984 and all income years thereafter.

Acts 1987, No. 502, § 16: Apr. 1, 1987. Emergency clause provided: "It is hereby found and determined by the General Assembly that the State of Arkansas is in great need of additional general revenues and that providing a tax penalty amnesty program will result in a substantial addition to the generation of such much needed general revenues. It is further found and determined that certain criminal and civil penalties provided for in the Arkansas Tax Procedure Act must be made more severe to effectuate the collection of taxes owed under the laws of this State. Therefore, an emergency is hereby declared to exist and this Act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1989, No. 826, § 36, provided that the amendment of this section by that act shall be effective for income years beginning on or after January 1, 1990.

Acts 1993, No. 785, § 24: Mar. 30, 1993. Emergency clause provided: "It is hereby found and determined that certain changes are necessary to the Arkansas income tax laws; that these changes are necessary immediately in order to maintain the efficient administration of the Arkansas income tax laws; and that this act is necessary to effectuate that purpose. Therefore, an emergency is hereby declared to exist and this act being necessary for the preservation of public peace, health and safety shall be in full force and

effect from and after its passage and approval."

Acts 1993, No. 785, § 20: amendments to subchapters 1, 4, 5, 9, and 10 effective for taxable years beginning on and after January 1, 1993.

Acts 1993, No. 1205, § 3; in full force and effect for all income years beginning on and after January 1, 1994.

Acts 1995, No. 1160, § 46: Apr. 11, 1995. Emergency clause provided: "It is hereby found and determined by the General Assembly that certain changes are necessary to the Arkansas tax laws; that these changes are necessary immediately in order to maintain the efficient administration of the Arkansas income tax laws; and that this act is necessary to effectuate that purpose. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1997, No. 951, § 34, provided: "Sections 1 through 24, 32 and 33 shall be effective for tax years beginning on and after January 1, 1997. However, it is the intent of this Act that those portions of the Internal Revenue Code adopted by this Act which for federal tax purposes do not become effective until some time after January 1, 1997, shall also not become effective for state tax purposes until the same time."

Acts 1997, No. 951, § 38: March 31, 1997. Emergency clause provided: "It is hereby found and determined by the General Assembly that current state tax laws are unclear or confusing, creating difficulty for taxpayers seeking to comply with these tax laws; that the changes made by Sections 25 through 31 of this bill are necessary to provide adequate direction to those taxpayers and to maintain the efficient administration of the Arkansas tax laws; and that the provisions of Sections 25 through 31 of this Act are necessary to effectuate that purpose. Therefore, an emergency is hereby declared to exist and the provisions of Sections 25 through 31 of this Act being necessary for the preservation of the public peace, health, and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, Sections 25 through 31 shall become effective on the expiration of the

period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, Sections 25 through 31 shall become effective on the date the last house overrides the veto."

Acts 1999, No. 1126, § 43: effective for tax years beginning on or after January 1, 1999.

Acts 2003, No. 774, § 6: effective for tax years beginning on or after January 1, 2003.

Acts 2005, No. 1982, § 2: effective for tax years beginning on or after January 1, 2006.

Acts 2005, No. 1309, § 1: effective for tax years beginning on and after January 1, 2006.

Acts 2009, No. 372, § 25, provided: "This act is effective for tax years beginning on and after January 1, 2009."

## RESEARCH REFERENCES

**Am. Jur.** 71 Am. Jur. 2d, State Tax., § 602.

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### 26-51-901. Title.

This subchapter may be cited as the "Arkansas Income Tax Withholding Act of 1965".

**History.** Acts 1965, No. 132, § 1; A.S.A. 1947, § 84-2074.

### 26-51-902. Definitions.

As used in this subchapter:

(1) "Agricultural labor" means agricultural labor as defined in 26 U.S.C. § 3121(g), as in effect January 1, 1993;

(2) "Calendar quarter" means the period of three (3) consecutive months ending on March 31, June 30, September 30, or December 31;

(3) "Director" means the Director of the Department of Finance and Administration of the State of Arkansas;

(4) "Division" means the Revenue Division of the Department of Finance and Administration of the State of Arkansas;

(5) "Employee" means any individual subject to the Income Tax Act of 1929, § 26-51-101 et seq., who performs or performed services for an employer and receives wages for the services;

(6) "Employer" means a person doing business in or deriving income from sources within this state who has control of the payment of wages to an individual for services performed, or a person who is the officer or agent of the person having control of the payment of wages;

(7) "Estimated tax" means the amount by which the tax liability of the taxpayer under the Income Tax Act of 1929, § 26-51-101 et seq., can reasonably be expected to exceed the amount withheld from wages of the taxpayer pursuant to this subchapter during the income year;

(8)(A) "Income year" means the calendar or fiscal year upon the basis of which the net income of the taxpayer is computed under the Income Tax Act of 1929, § 26-51-101 et seq.

(B) If no fiscal year has been established, it means the calendar year;

(9) "Payroll period" means a period for which a payment of wages is made to the employee by the employer;

(10) "Person" means individuals, fiduciaries, corporations, partnerships, limited liability companies, associations, the state and its political subdivisions, and the federal government and its agencies and instrumentalities;

(11) "Taxpayer" means any individual, fiduciary, corporation, partnership, limited liability company, or other legal entity subject to the reporting requirements of the Income Tax Act of 1929, § 26-51-101 et seq.;

(12)(A) "Transient employer" means an employer who is not a resident of this state and who temporarily engages in any activity within this state for the production of income.

(B) Without intending to exclude others that may come within the definition of "transient employer" in subdivision (12)(A) of this section, any nonresident employer engaging in any such activity within this state which, as of any date, cannot be reasonably expected to continue for a period of eighteen (18) consecutive months shall be deemed to be temporarily engaged in such activity; and

(13) "Wages" means remuneration in cash or other form for services performed by an employee for an employer, except that it shall not include remuneration paid:

(A) For domestic service in a private home, local college club, or local chapter of a college fraternity or sorority;

(B)(i) For agricultural labor, except that an agricultural employer who pays wages as defined in 26 U.S.C. § 3121(a), as in effect on January 1, 1993, to four (4) or more employees during any reporting period shall be required to collect, account for, and pay over Arkansas income taxes for that reporting period.

(ii) An employer who pays wages for agricultural labor to three (3) or fewer employees during any reporting period shall have the option to collect, account for, and pay over Arkansas income taxes for each reporting period if the employer so chooses;

(C) For services not in the course of the employee's trade or business performed by an employee in any calendar quarter unless the remuneration paid for such services is one hundred fifty dollars (\$150) or more;

(D) For services performed by an ordained, commissioned, or licensed minister of a church in the exercise of his or her ministry or by a member of a religious order performing duties required by the religious order;

(E) For active service performed in a month in which the employee is entitled to the benefits in 26 U.S.C. § 112, adopted by § 26-51-306, to the extent remuneration for the service is excludable from gross income under § 26-51-306;

(F) For services performed for an employer by a United States citizen if it is reasonable to believe when the remuneration is paid



that the remuneration will be excludable from gross income under 26 U.S.C. § 911, adopted by § 26-51-310;

(G) For services performed by an individual under eighteen (18) years of age delivering or distributing newspapers or shopper's news, excluding the delivery or distribution of the newspapers or shopper's news to a destination for subsequent delivery or distribution;

(H) For services performed by an individual selling newspapers or magazines to consumers under an arrangement in which the newspapers or magazines are sold at a fixed price with the individual's compensation equal to the excess of the fixed price over the amount the individual pays for the newspaper or magazines, regardless of whether the individual is guaranteed a minimum amount of compensation or entitled to a credit for the unsold newspapers or magazines returned;

(I) For services performed by an individual that are not in the course of the employer's trade or business if the remuneration is paid in any medium other than cash;

(J) To an employee or his or her beneficiary:

(i) From a trust or to a trust exempt from tax under § 26-51-308 unless the payment is rendered to an employee of the trust as remuneration for services rendered by the employee and not as a beneficiary of the trust;

(ii) Under an annuity plan or to an annuity plan under 26 U.S.C. § 403(a), adopted by § 26-51-414;

(iii) Under 26 U.S.C. §§ 402(h)(1) and (2), adopted by § 26-51-414, if it is reasonable to believe at the time of payment that the payment will be excluded under § 26-51-414;

(iv) Under 26 U.S.C. § 408(p), adopted by § 26-51-414; or

(v) Under an eligible deferred compensation plan or paid to an eligible deferred compensation plan under 26 U.S.C. § 457(b), maintained by an eligible employer under 26 U.S.C. § 457(e)(1)(A), as those sections are adopted by § 26-51-414;

(K) In the form of group-term life insurance on the life of an employee;

(L) To or on behalf of an employee if it is reasonable to believe at the time of payment that a corresponding deduction is allowed under § 26-51-423 with the exception of 26 U.S.C. § 274(n), adopted by § 26-51-423(b);

(M) As tips in any medium other than cash;

(N) As cash tips to an employee received in the course of employment in any calendar month unless the amount of the cash tips is twenty dollars (\$20.00) or more;

(O) For any benefit provided to an employee if it is reasonable to believe that the benefit is excluded from income under § 26-51-404(a)(4), § 26-51-404(b)(12), § 26-51-404(b)(19), or § 26-51-404(b)(20);

(P) For any medical reimbursement made to an employee or for the benefit of an employee under a self-insured medical reimbursement plan under 26 U.S.C. § 105(h)(6), adopted by § 26-51-404; and

(Q) For any payment made to an employee or for the benefit of an employee if it is reasonable to believe that the payment is excluded from income under 26 U.S.C. § 106(b), adopted by § 26-51-404.

**History.** Acts 1965, No. 132, § 2; 1967, No. 15, § 1; 1981, No. 917, § 1; A.S.A. 1947, § 84-2075; Acts 1989, No. 826, § 35; 1993, No. 1205, §§ 1, 2; 1995, No. 1160, § 20; 2005, No. 1309, § 3.

**Publisher's Notes.** Acts 1989, No. 826, § 1, provided that this act shall be known and may be cited as the "Arkansas Income Tax Technical Revenue Act of 1989".

## CASE NOTES

### ANALYSIS

Agricultural Labor.  
Wages.

#### Agricultural Labor.

If a nursery and a garden center did nothing more than raise the horticultural products, they would be exempt from withholding income taxes on wages because such wages would be for "agricultural labor," but exemption of wages paid for "agricultural labor" is not applicable to wages paid for landscaping. *Ragland v. Pittman Garden Ctr.*, 293 Ark. 533, 739 S.W.2d 671 (1987). But see *Ragland v. Pittman Garden Ctr., Inc.*, 299 Ark. 293, 772 S.W.2d 331 (1989).

Agricultural labor exemption applies only if the employee in question performs services that constitute valid agricultural labor for at least one-half (½) of any pay period (a period of not more than 31 consecutive days). *Ragland v. Pittman Garden Ctr., Inc.*, 299 Ark. 293, 772 S.W.2d 331 (1989).

In calculating time devoted to agricultural and nonagricultural labor, nonagricultural labor commenced not when the employees arrived at the landscaping site,

but when they left the nursery to engage in nonagricultural activity. *Ragland v. Pittman Garden Ctr., Inc.*, 299 Ark. 293, 772 S.W.2d 331 (1989).

Nursery company workers were not involved in agriculture but in landscaping where 75 percent of the time they actually installed the plants they delivered into the ground, therefore, the employees were not exempt from state income tax. *Ragland v. Pittman Garden Ctr., Inc.*, 307 Ark. 374, 820 S.W.2d 450 (1991).

#### Wages.

Awards of backpay and front pay (in lieu of reinstatement) to a wrongfully discharged employee did not constitute wages, and the withholding requirements in federal and state income tax law were not applicable because (1) the key factor in determining whether an award constituted wages was the nature of the employer-employee relationship at the time the compensation was being paid for; and (2) during the time period for which these awards were meant to compensate, the employee was not an employee of the employer. Thus, the employer was not required or authorized to withhold the taxes. *Ark. HHS v. Storey*, 372 Ark. 23, 269 S.W.3d 803 (2007).

## 26-51-903. Subchapter supplemental.

The provisions of this subchapter are declared to be supplemental to the provisions of the Income Tax Act of 1929, § 26-51-101 et seq., and shall not be construed to repeal any part thereof not in direct conflict with this subchapter.

**History.** Acts 1965, No. 132, § 26; A.S.A. 1947, § 84-2085n.

**26-51-904. Rules and regulations — Forms.**

The Director of the Department of Finance and Administration shall make and prescribe such rules, regulations, and forms as he or she shall deem necessary to carry out the purposes of this subchapter.

**History.** Acts 1965, No. 132, § 17; A.S.A. 1947, § 84-2080.

**26-51-905. Withholding of tax.**

(a)(1) Every employer making payments of wages to employees shall deduct and withhold from the employees' wages an amount determined from withholding tables promulgated by the Director of the Department of Finance and Administration and furnished to the employer.

(2) The full amount deducted and withheld from any employee's wages during the income year shall be credited against the tax liability of the employee under the Income Tax Act of 1929, § 26-51-101 et seq., for that year.

(b)(1) Notwithstanding the provisions of subsection (a) of this section, every employer who withholds less than one thousand dollars (\$1,000) for a full year's withholding shall report and remit annually on a date specified by the director any amounts so withheld by the employer.

(2) An employer shall be advised by the director of the employer's classification and shall report as classified until such time as the employer advises the director in writing that the employer no longer has employees or the employer is closing the business.

(3) However, it shall be the duty of the employer to report to the director at the end of each income year all wages paid to any such employees on the same forms provided in this subchapter for making employer annual withholding statements in order that the director may determine the tax liability, if any, of those employees during that income year.

**History.** Acts 1965, No. 132, § 3; 1968 § 1; 1981, No. 851, § 1; A.S.A. 1947, § 84- (1st Ex. Sess.), No. 61, § 1; 1969, No. 122, 2076; 2003, No. 1017, § 2.

**CASE NOTES****Failure to Withhold.**

There was no error in failing to give employers additional credit against unpaid withholding taxes for taxes certain employees claimed they had paid where (1) the Arkansas Department of Finance and Administration's records did not show that the employees had paid their taxes and (2) the employers were not entitled to any credit under § 26-51-916 because they had not shown reasonable cause for failing to withhold and remit taxes. *Morris v. Ark. Dep't of Fin. & Admin.*, 82 Ark. App. 124, 112 S.W.3d 378 (2003).

Awards of backpay and front pay (in lieu of reinstatement) to a wrongfully discharged employee did not constitute wages, and the withholding requirements in federal and state income tax law were not applicable because (1) the key factor in determining whether an award constituted wages was the nature of the employer-employee relationship at the time the compensation was being paid for; and



(2) during the time period for which these awards were meant to compensate, the employee was not an employee of the employer. Thus, the employer was not required or authorized to withhold the

taxes. Ark. HHS v. Storey, 372 Ark. 23, 269 S.W.3d 803 (2007).

**Cited:** Ragland v. Pittman Garden Ctr., 293 Ark. 533, 739 S.W.2d 671 (1987).

### **26-51-906. Withholding state income taxes of federal employees by federal agencies.**

The Director of the Department of Finance and Administration is authorized and directed to enter into an agreement with the Secretary of the Treasury of the United States with respect to withholding of income tax as provided by this subchapter and pursuant to an Pub. Law No. 587 of 1952 and to Executive Order No. 10407 of November 7, 1952.

**History.** Acts 1965, No. 132, § 23; A.S.A. 1947, § 84-2085.

**U.S. Code.** Public Law No. 587 of 1952 was codified at 5 U.S.C. §§ 84b and 84c. For present law, see 5 U.S.C. § 5517. Executive Order No. 10407 of November

7, 1952, referred to in this section may be found at 17 Fed. Reg. 10132. It was revoked by Executive Order No. 11968 of January 31, 1977, which may be found at 42 Fed. Reg. 6787.

### **26-51-907. Withholding tables.**

The Director of the Department of Finance and Administration shall prepare and furnish to employers state income tax withholding tables based on the current income tax laws of the state, taking into consideration the various deductions and personal tax credits allowed therein. The tables shall be designed to provide for a yearly aggregate withholding that will approximate the state income tax liability of the average taxpayer with the various personal tax credits.

**History.** Acts 1965, No. 132, § 17; A.S.A. 1947, § 84-2080.

### **26-51-908. Employer's return and payment of taxes withheld.**

(a)(1) Every employer required to deduct and withhold from wages under this subchapter shall file a withholding return on an annual basis as prescribed by the Director of the Department of Finance and Administration and annually pay over to the director the full amount required to be deducted and withheld from the wages of the employees if the amount is less than one thousand dollars (\$1,000) per year.

(2) Every employer required to deduct and withhold from wages under this subchapter shall file a withholding return on a monthly basis as prescribed by the director and pay over on a monthly basis to the director the full amount required to be deducted and withheld from the wages of the employees if the amount is one thousand dollars (\$1,000) or more per year.

(3) However, the director may provide by regulation that every such employer shall on or before the fifteenth day of each month pay over to the director or a depository designated by the director the amount

required to be deducted and withheld by the employer for the preceding month if the amount is one hundred dollars (\$100) or more.

(b)(1) Notwithstanding any other provision of this section, all transient employers shall make return and pay over to the director, on a monthly basis, the full amounts required to be deducted and withheld from the wages by the transient employer for the calendar month.

(2) The returns and payments to the director by transient employers shall be made on or before the last day of the month following the month for which the amounts were deducted and withheld from the wages of the transient employer's employees.

(c)(1) Notwithstanding any other provision of this section, all employers engaged in any business which is seasonal shall make return and pay over to the director on a monthly basis the amounts required to be deducted and withheld from the wages by the employer for the calendar month.

(2) Returns and payments to the director by employers engaged in seasonal business shall be made on or before the last day of the month following the month for which those amounts were deducted and withheld from the wages of the employer's employees.

(d) When the director has justifiable reason to believe that the collection of funds required to be withheld by any employer as provided in this subchapter is in jeopardy, the director may require the employer to file a return and pay the amounts required to be withheld at any time.

(e) Every employer who fails to withhold or pay to the director any sums required by this subchapter to be withheld and paid shall be personally and individually liable for the sums except as provided in § 26-51-916.

(f) Any sum withheld in accordance with the provisions of this subchapter shall be deemed to be held in trust for the State of Arkansas and shall be recorded by the employer in a ledger account so as to clearly indicate the amount of tax withheld and that the amount is the property of the State of Arkansas.

(g)(1) When an employer has become liable to an annual return of withholding, the employer must continue to file an annual report, even though no tax has been withheld, until such time as the employer notifies the director, in writing, that the employer no longer has employees or that the employer is no longer liable for an annual return.

(2) When an employer has become liable to a monthly return of withholding, the employer must continue to file a monthly report, even though no tax has been withheld until such time as the employer notifies the director, in writing, that the employer no longer has employees or that the employer is no longer liable for monthly returns.

(h)(1) For any withholding tax reporting period, a company or any other business enterprise which provides the service of reporting and remitting withholding tax on the wages paid to Arkansas employees by other employers shall remit all such withholding taxes to the director by electronic funds transfer, as more particularly described in § 26-19-105.

(2) However, a company or business which provides tax reporting and remitting services shall not be required to remit withholding taxes by electronic funds transfer if the company or business provides those services for fewer than one hundred (100) Arkansas employers.

(3) As used in this subsection, "Arkansas employer" means any employer required by Arkansas law to withhold, report, and remit Arkansas income tax on the wages, salary, or other compensation paid to its employees within this state.

**History.** Acts 1965, No. 132, § 5; A.S.A. 1947, § 84-2076.2; Acts 1989, No. 826, § 11; 1997, No. 951, §§ 25, 26; 1999, No. 1132, § 5; 2003, No. 1017, § 1; 2007, No. 827, § 220.

**Publisher's Notes.** As to the short title of Acts 1989, No. 826, see Publisher's Notes, § 26-51-902.

## CASE NOTES

### ANALYSIS

Failure to Withhold.  
Subrogation.

#### Failure to Withhold.

There was no error in failing to give employers additional credit against unpaid withholding taxes for taxes certain employees claimed they had paid where (1) the Arkansas Department of Finance and Administration's records did not show that the employees had paid their taxes and (2) the employers were not entitled to

any credit under § 26-51-916 because they had not shown reasonable cause for failing to withhold and remit taxes. *Morris v. Ark. Dep't of Fin. & Admin.*, 82 Ark. App. 124, 112 S.W.3d 378 (2003).

#### Subrogation.

Employers who failed to withhold and remit taxes were not entitled to subrogation against their employees, as only the employers, not the employees, were liable under the withholding tax statutes. *Morris v. Ark. Dep't of Fin. & Admin.*, 82 Ark. App. 124, 112 S.W.3d 378 (2003).

## 26-51-909. Annual withholding statement.

(a) Every employer shall file an annual statement of withholding for each employee.

(b)(1) The annual statement of withholding shall be in the form prescribed by the Director of the Department of Finance and Administration.

(2)(A) The statement from the employer shall be filed with the director on or before February 28 following the close of the income year.

(B) For tax years beginning on or after January 1, 2006, an employer who has two hundred fifty (250) or more employees during the employer's income year shall file the statement either:

(i) Electronically;

(ii) On magnetic media; or

(iii) In any other machine-readable form approved by the director.

(3)(A) The employer shall provide two (2) copies of the statement to the employee on or before January 31 following the close of the income year.



(B) However, if the employment of the employee is terminated during the calendar year, the employer shall furnish the statement to the employee at the time of the termination of employment.

(c) The statement shall show:

(1) The name and withholding account number of the employer;

(2) The name of the employee and his or her social security account number;

(3) The total compensation paid the employee;

(4) The total amount withheld by the employer pursuant to this subchapter for the year or part of a calendar year when the employee worked for less than a full calendar year; and

(5) Such other information as the director shall require by rule or regulation.

(d) An annual withholding statement shall not be required for wages less than six hundred dollars (\$600) for services rendered as agricultural labor.

**History.** Acts 1965, No. 132, § 7; 1967, No. 636, § 2; A.S.A. 1947, § 84-2077; Acts 1993, No. 785, § 15; 2005, No. 1309, § 2.

### **26-51-910. Refunds to employer for overpayment.**

Any employer who makes an overpayment of the tax required to be remitted to the Director of the Department of Finance and Administration by § 26-51-908 may file application with the director, on a form prescribed by the director, to have the amount of such overpayment refunded to him or her or to have the amount credited against the payment which he or she is required to make for a subsequent quarterly period. However, the refund or credit shall be allowed only to the extent that the amount of the overpayment was not withheld under § 26-51-905 by the employer.

**History.** Acts 1965, No. 132, § 10; 1979, No. 401, § 48; A.S.A. 1947, § 84-2078.2.

### **26-51-911. Declaration of estimated tax.**

(a) Every taxpayer subject to the tax levied by the Income Tax Act of 1929, § 26-51-101 et seq., shall make and file with the Director of the Department of Finance and Administration a declaration of the estimated tax for the income year if the taxpayer can reasonably expect the estimated tax to be more than one thousand dollars (\$1,000).

(b) The declaration of estimated tax shall be made on such forms and shall include such information as the director shall prescribe.

(c)(1) The declaration shall be filed with the director on or before the fifteenth day of the fourth month of the income year of the taxpayer.

(2) However, taxpayers whose income from farming for the income year can reasonably be expected to amount to at least two-thirds ( $\frac{2}{3}$ ) of

the total gross income from all sources for the income year may file the declaration and pay the estimated tax on or before the fifteenth day of the second month after the close of the income year, or in lieu of filing any declaration, may file an income tax return and pay the tax on or before the fifteenth day of the third month after the close of the income year.

(d) A taxpayer who, due to a change of circumstances, first meets the requirements for filing a declaration after the fifteenth day of the fourth month of the income year shall make and file the declaration on or before the next regular quarterly tax payment date.

(e)(1) A single declaration may be filed jointly by a husband and wife having the same income year.

(2) If a joint declaration is filed by a husband and wife and they do not file a joint return for the income year, the estimated tax paid under the joint declaration may be treated as the estimated tax of either the husband or wife or may be divided between them.

(f) A taxpayer may file amendments to a declaration at such times, under such rules and regulations, and in such form as the director shall prescribe.

**History.** Acts 1965, No. 132, §§ 11-14; 1967, No. 13, § 1; 1967, No. 105, § 1; 1967, No. 636, §§ 4, 5; 1968 (1st Ex. Sess.), No. 61, § 6; 1977, No. 200, § 1; 1983, No. 831, § 1; A.S.A. 1947, §§ 84-2079 — 84-2079.3; Acts 1989, No. 826,

§ 12; 1999, No. 1126, § 8; 2003, No. 774, § 4.

**Publisher's Notes.** As to the short title of Acts 1989, No. 826, see Publisher's Notes, § 26-51-902.

CASE NOTES

**Cited:** Dixie Furn. Co. v. Ragland, 300 Ark. 69, 776 S.W.2d 357 (1989); Kansas

City S. Ry. v. Pledger, 301 Ark. 564, 785 S.W.2d 462 (1990).

26-51-912. Minimum estimated tax.

A taxpayer who makes a declaration of estimated tax for the income year shall estimate an amount not less than ninety percent (90%) of the amount actually due.

**History.** Acts 1965, No. 132, § 15; 1967, No. 636, § 6; A.S.A. 1947, § 84-2079.4; Acts 1987, No. 502, § 14.

**Publisher's Notes.** As to title, defini-

tions, etc., of Acts 1987, No. 502, see A.C.R.C. Notes to § 26-18-201 et seq.

**Cross References.** Additional penalties and tax, § 26-18-208.

CASE NOTES

**Cited:** Dixie Furn. Co. v. Ragland, 300 Ark. 69, 776 S.W.2d 357 (1989); Kansas

City S. Ry. v. Pledger, 301 Ark. 564, 785 S.W.2d 462 (1990).

**26-51-913. Payment of estimated tax.**

(a) The estimated tax as shown on the declaration filed with the Director of the Department of Finance and Administration shall be paid as follows:

(1) If the estimated tax is not more than one thousand dollars (\$1,000), payment may be made at the time the declaration is filed or at the time the return for the income year is filed;

(2) If the estimated tax is in excess of one thousand dollars (\$1,000), it may be paid in full at the time of filing the declaration of estimated tax, or, at the election of the taxpayer, it may be paid in four (4) equal installments to be due as follows:

(A) The first installment is due at the time prescribed for filing the declaration;

(B) The second installment is due on or before the fifteenth day of the sixth month of the income year;

(C) The third installment is due on or before the fifteenth day of the ninth month of the income year; and

(D) For:

(i) Individual income tax, the fourth installment is due on or before the fifteenth day of the first month after the close of the income year; or

(ii) Corporation income tax, the fourth installment is due on or before the fifteenth day of the last month of the income year;

(3) In the case of a taxpayer who files an amendment to the declaration, the quarterly tax payments coming due after the amendment shall be adjusted either up or down to conform to the amended declaration of estimated tax; and

(4)(A) In the case of a taxpayer who first meets the requirements and files a declaration subsequent to the fifteenth day of the fourth month of the income year and not later than the fifteenth day of the ninth month of the income year, if the estimated tax is in excess of one thousand dollars (\$1,000), the taxpayer may pay the estimated tax in equal installments with the first installment being due at the time of filing the declaration and an installment being due on each subsequent regular quarterly tax payment date for the income year as prescribed in subdivision (a)(2) of this section.

(B) If the declaration is filed subsequent to the fifteenth day of the ninth month of the income year and on or before the fifteenth day of the first month after the close of the income year, the estimated tax shall be paid in full at the time of filing the declaration.

(b) Any tax payment due under the provisions of this subchapter may be paid by the taxpayer in advance of the date prescribed in the section for the payment of the tax.

**History.** Acts 1965, No. 132, § 16; 1983, No. 831, § 2; A.S.A. 1947, § 84-2079.5; Acts 1989, No. 826, § 13; 1999, No. 1126, § 9; 2003, No. 774, § 5.

**Publisher's Notes.** As to applicability of 1983 amendment, see Publisher's Notes to § 26-51-911.

As to the short title of Acts 1989, No.



826, see Publisher's Notes, § 26-51-902.

### CASE NOTES

**Cited:** *Dixie Furn. Co. v. Ragland*, 300 Ark. 69, 776 S.W.2d 357 (1989).

#### **26-51-914. Furnishing exemption certificate to employer.**

(a) Every employee whose wages are subject to the withholding provisions of this subchapter shall furnish his or her employer with a certificate showing the number of dependents claimed by the employee for purposes of withholding.

(b) If any employee fails or refuses to furnish his or her employer with the certificate, the employer shall withhold from the wages of the employee as if the employee claimed no credit or exemption either for himself or herself or for any dependents.

(c) The furnishing of information in the form required for federal income tax purposes shall be sufficient for the purposes of this section.

**History.** Acts 1965, No. 132, § 19; A.S.A. 1947, § 84-2082.

#### **26-51-915. Deposits of payments — Refunds.**

(a) All payments received by the Director of the Department of Finance and Administration from employers for taxes withheld from employees and all payments received by the director from taxpayers as herein provided shall be deposited into the State Treasury as general revenues to the credit of the State Apportionment Fund.

(b) Based upon information provided by the director, the Chief Fiscal Officer of the State shall determine the amount estimated to be necessary to meet any refunds of state income taxes under the provisions of this subchapter, and, upon certification of the Chief Fiscal Officer of the State, the Treasurer of State shall transfer from any general revenues in the General Revenue Allotment Reserve Fund the amount so certified to the Individual Income Tax Withholding Fund, from which the director is authorized to make refunds as provided for by law and by this subchapter.

(c) All refund warrants drawn against the Individual Income Tax Withholding Fund which are not presented for payment within one (1) year of issuance shall be void.

(d) Neither the director nor any member or employee of the Revenue Division of the Department of Finance and Administration shall be held personally liable for making any refund by reason of a fraudulent withholding certificate being used as a basis for the refund.

**History.** Acts 1965, No. 132, § 22; 1965 (1st Ex. Sess.), No. 5, § 7; 1969, No. 620, § 17; A.S.A. 1947, § 84-2084.

**Cross References.** General Revenue Allotment Reserve Fund, § 19-5-1004. Individual Income Tax Withholding

Fund, § 19-5-904.

State Apportionment Fund, § 19-5-201.

### **26-51-916. Employer liable for amounts required to be withheld — Exceptions.**

Every employer shall be liable for amounts required to be deducted and withheld by this subchapter regardless of whether or not the amounts were in fact deducted and withheld. However, if the employer fails to deduct and withhold the required amounts and if the tax against which the required amounts would have been credited is paid, the employer shall not be liable for those amounts not deducted and withheld if the failure was due to reasonable cause.

**History.** Acts 1965, No. 132, § 4; A.S.A. 1947, § 84-2076.1.

#### **CASE NOTES**

##### **Failure to Withhold.**

There was no error in failing to give employers additional credit against unpaid withholding taxes for taxes certain employees claimed they had paid where (1) the Arkansas Department of Finance and Administration's records did not show

that the employees had paid their taxes and (2) the employers were not entitled to any credit under this section because they had not shown reasonable cause for failing to withhold and remit taxes. *Morris v. Ark. Dep't of Fin. & Admin.*, 82 Ark. App. 124, 112 S.W.3d 378 (2003).

### **26-51-917. Employer's withholding account number.**

Every employer, as defined in this subchapter, shall make application to the Revenue Division of the Department of Finance and Administration for and be assigned an employer's withholding account number. The account number assigned to an employer shall be used by the employer on all returns, reports, and inquiries addressed to the Director of the Department of Finance and Administration or the division.

**History.** Acts 1965, No. 132, § 18; A.S.A. 1947, § 84-2081.

### **26-51-918. Withholding — Deferred income.**

(a)(1) Title 26 U.S.C. § 3405, as in effect on January 1, 2005, regarding withholding from deferred income, is adopted as modified by subdivision (a)(2) of this section.

(2) For the purposes of Arkansas withholding tax under this section:

(A) The amount of withholding required under 26 U.S.C. § 3405(b)(1) shall be three percent (3%); and

(B) The amount of withholding required under 26 U.S.C. § 3405(c)(1)(B) shall be five percent (5%).

(b) This section shall apply only when the payee is an Arkansas resident.

**History.** Acts 2005, No. 1309, § 1.

**A.C.R.C. Notes.** As enacted by Acts 2005, No. 1309, § 1, this section contained a subsection (d) that read: "This section shall become effective for tax years beginning on and after January 1, 2006."

## **26-51-919. Pass-through entities.**

(a) As used in this section:

(1) "Lower-tier pass-through entity" means a member of a pass-through entity that is itself a pass-through entity;

(2)(A) "Member" means a shareholder of a Subchapter S corporation, a partner in a general partnership, a partner in a limited partnership, a partner in a limited liability partnership, a member of a limited liability company, or a beneficiary of a trust.

(B) "Member" does not mean a Subchapter C corporation as defined in 26 U.S.C. § 1361(a), in effect January 1, 2005;

(3) "Nonresident" means:

(A) An individual who is not a resident of or domiciled in Arkansas during any part of the tax year;

(B) A business entity that does not have its commercial domicile in Arkansas during any part of the tax year; or

(C) A trust not organized in Arkansas; and

(4) "Pass-through entity" means a business entity that for the applicable tax year is:

(A) A corporation treated as a Subchapter S corporation under § 26-51-409, a general partnership, limited partnership, limited liability partnership, limited liability company, or a trust; and

(B) Not taxed as a corporation for federal or Arkansas income tax purposes.

(b)(1)(A)(i) A pass-through entity shall withhold Arkansas income tax at the highest income tax rate levied under §§ 26-51-201 and 26-51-202 on the share of income of the pass-through entity that is derived from or attributable to sources within this state and distributed to each nonresident member.

(ii) The pass-through entity is liable to the Director of the Department of Finance and Administration for the payment of the tax required to be withheld and is not liable to the member for the amount withheld and paid to the director.

(B)(i) A lower-tier pass-through entity shall withhold and pay income tax on the share of income distributed by the lower-tier pass-through entity to each of its nonresident members.

(ii) The director shall apply the tax withheld and paid by a pass-through entity on distributions to a lower-tier pass-through entity to the withholding required of that lower-tier pass-through entity.

(2)(A) On or before the due date for the pass-through entity's composite income tax return described in subsection (d) of this section, a pass-through entity shall file an annual return with the director showing the total amount of income distributed or credited to its nonresident members and the amount of tax withheld and shall remit the amount of tax withheld.



(B) The annual return shall be in an electronic format prescribed by the director.

(3) A pass-through entity shall annually furnish a nonresident member of the pass-through entity with a record of the amount of tax withheld on behalf of the nonresident member no later than the fifteenth day of the fourth month following the end of the pass-through entity's tax year.

(c) A pass-through entity is not required to withhold tax for a nonresident member if:

(1) The nonresident member has a pro rata or distributive share of income of the pass-through entity from doing business in or deriving income from sources within this state of less than one thousand dollars (\$1,000) per year;

(2) The director has determined that the nonresident member's income is not subject to withholding;

(3) The nonresident member elects to have the tax due paid as part of a composite return filed by the pass-through entity under subsection (d) of this section;

(4) The pass-through entity:

(A) Is a publicly traded partnership as defined by 26 U.S.C. § 7704(b), as in effect on January 1, 2005, that is treated as a partnership for the purposes of federal income taxation; and

(B) Has agreed to file an annual information return reporting the name, address, and taxpayer identification number of each member with an annual Arkansas income greater than five hundred dollars (\$500) along with any other information requested by the director;

(5)(A) The pass-through entity has filed with the director on forms prescribed by the director the nonresident member's signed agreement to timely file an Arkansas nonresident individual or trust income tax return, to pay any tax due on the return, and to be subject to the jurisdiction of the Department of Finance and Administration in the courts of this state for the purpose of determining and collecting any Arkansas income tax together with interest and penalties owed by the nonresident member.

(B)(i) The department may revoke the exception from the withholding requirement in subdivision (c)(5)(A) of this section if it is determined that the nonresident member is not abiding by the terms of the agreement.

(ii) At the time of revocation, the department shall notify the pass-through entity that withholding is required for future distributions to the nonresident member whose exception is revoked; or

(6) The income received by the nonresident member is exempt from Arkansas income tax pursuant to § 26-51-202(e).

(d)(1) A pass-through entity may file a composite income tax return on behalf of electing nonresident members reporting and paying Arkansas income tax at the highest income tax rate under §§ 26-51-201 and 26-51-202 on the nonresident member's pro rata or distributive shares of income of the pass-through entity from doing business in or deriving income from sources within this state.

(2) A nonresident member whose only source of income within this state is from one (1) or more pass-through entities may elect to be included in a composite return filed pursuant to this section.

(3) A nonresident member who has been included in a composite return may file an individual income tax return and shall receive credit for income tax paid on the nonresident member's behalf by the pass-through entity.

(4) On or before the fifteenth day of the fourth month following the close of the pass-through entity's tax year, a pass-through entity shall file an annual composite return with the director showing the total amount of income distributed or credited to its nonresident members and the amount of tax withheld and shall remit the tax due on the composite income tax return.

(e) The director may promulgate rules necessary to administer this section.

**History.** Acts 2005, No. 1982, § 1; 2007, No. 218, § 37; 2009, No. 372, § 24.

**Amendments.** The 2009 amendment substituted "fourth" for "third" in (b)(3).

## SUBCHAPTER 10 — WATER RESOURCE CONSERVATION AND DEVELOPMENT INCENTIVES ACT

### SECTION.

- 26-51-1001. Title.
- 26-51-1002. Legislative findings.
- 26-51-1003. Definitions.
- 26-51-1004. Applicability — Effective date.
- 26-51-1005. Credit granted — Water impoundments.
- 26-51-1006. [Repealed.]
- 26-51-1007. Credit granted — Surface water conversion outside critical areas.
- 26-51-1008. Credit granted — Surface water conversion within critical areas.

### SECTION.

- 26-51-1009. Credit granted — Land leveling for water conservation.
- 26-51-1010. Application and approval procedure — Administration.
- 26-51-1011. Development, operation, and tax credits.
- 26-51-1012. Deduction for project costs above tax credit.
- 26-51-1013. Annual compilation of credits — Expiration of the subchapter.
- 26-51-1014. Construction.

**Publisher's Notes.** Former Subchapter 10, the Water Resource Conservation and Development Act of 1985, was repealed by implication by Acts 1995, No. 341, § 19. The subchapter was derived from the following sources:

- 26-51-1001. Acts 1985, No. 417, § 1; A.S.A. 1947, § 84-2021.24.
- 26-51-1002. Acts 1985, No. 417, § 2; A.S.A. 1947, § 84-2021.25.
- 26-51-1003. Acts 1985, No. 417, § 7;

1985 (1st Ex. Sess.), No. 26, § 3; A.S.A. 1947, § 84-2021.30.

26-51-1004. Acts 1985, No. 417, § 5; A.S.A. 1947, § 84-2021.28.

26-51-1005. Acts 1985, No. 417, § 4; 1985 (1st Ex. Sess.), No. 26, § 2; A.S.A. 1947, § 84-2021.27.

26-51-1006. Acts 1985, No. 417, § 3; 1985 (1st Ex. Sess.), No. 26, § 1; A.S.A. 1947, § 84-2021.26; Acts 1993, No. 785, § 16.

26-51-1007. Acts 1985, No. 417, § 6; A.S.A. 1947, § 84-2021.29.

26-51-1008. Acts 1985, No. 417, § 10 as added by 1985 (1st Ex. Sess.), No. 26, § 4; A.S.A. 1947, § 84-2021.30a.

26-51-1009. Acts 1993, No. 657, § 2; 1993, No. 942, § 2.

**Effective Dates.** Acts 1995, No. 341, § 1: effective for taxable years beginning January 1, 1996.

Acts 1999, No. 765, § 3: effective for tax years beginning on and after January 1, 1999.

Acts 1999, No. 1050, § 23: Apr. 1, 1999. Emergency clause provided: "It is hereby found and determined by the Eighty Second Arkansas General Assembly that particular counties in this State face critical water shortages due to depletion of Sparta aquifer water and that these shortages are subject to remediation only by the immediate conjunctive use of surface water and groundwater. This act would allow the most critical counties to reduce the use of ground water and substitute available surface water. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

Acts 2001, No. 727, § 4: Mar. 12, 2001. Emergency clause provided: "It is found and determined by the General Assembly that ground water levels continue to decline throughout the state; that the

ground water levels in some areas of the state are critical; that it is urgent that steps be taken immediately to encourage greater use of surface water; and that changes in the tax credit law would encourage the installation of impoundments and water control structures to reduce ground water use and make it available for future generations. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

Acts 2011, No. 631 § 12: Mar. 23, 2011. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that a lawsuit concerning the amount of credit available per project has exposed the state to additional tax liability and that this act is immediately necessary to prevent further exploitation of the Water Resource Conservation and Development Incentives Act. Therefore, an emergency is declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

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## 26-51-1001. Title.

This subchapter shall be known as the "Water Resource Conservation and Development Incentives Act".

**History.** Acts 1995, No. 341, § 1.



**26-51-1002. Legislative findings.**

(a) The State of Arkansas is blessed with abundant rainfall and other surface and underground water resources which, when managed conjunctively, can provide a continuous high quality water supply to meet the foreseeable needs of the entire state.

(b) Existing water use patterns are depleting groundwater supplies at an unacceptable rate, and alternative surface water supplies are not available in sufficient quantities to alleviate this groundwater depletion problem.

(c) The tax incentives provided in this subchapter will encourage the water users to invest in:

(1) The construction of impoundments to utilize available surface water and reduce our dependence on groundwater;

(2) The conversion from groundwater use to surface water use when surface water is available; and

(3) The water conservation practice of land leveling to reduce agricultural irrigation water use.

(d) It is of utmost importance to Arkansas that, within critical groundwater areas, surface water be used when available.

**History.** Acts 1995, No. 341, § 2.

**26-51-1003. Definitions.**

As used in this subchapter:

(1) "Acre-foot" means the volumetric measure equal to forty-three thousand five hundred sixty cubic feet (43,560 cu. ft.) or approximately three hundred twenty-five thousand nine hundred gallons (325,900 gals.);

(2) "Application" means a written request for approval of a project for tax credits, describing the project, including a water conservation plan outlining the operation of the project and any additional requirements as the Arkansas Natural Resources Commission may adopt by rule;

(3) "Approved applicant" means an individual, fiduciary, partnership, limited liability company, or corporation that submits a written request for approval of a project for tax credits in compliance with this subchapter and receives a certificate of approval for that project;

(4) "Commission" means the Arkansas Natural Resources Commission;

(5) "Critical groundwater areas" means those areas that are designated by the commission pursuant to the Arkansas Groundwater Protection and Management Act, § 15-22-901 et seq.;

(6) "Department" means the Department of Finance and Administration;

(7) "Land leveling" means modifying the surface relief of a field to a planned grade to provide a more suitable surface for efficiently applying irrigation water without excessive erosion, loss of water quality, or damage to land by waterlogging;

(8) "Project" means:

(A) The construction, installation, or restoration of water impoundment or water control structures of twenty (20) acre-feet or more designed for the purpose of storing water to be used for agricultural, commercial, or industrial purposes;

(B) The conversion from groundwater to surface water use by agricultural, commercial, industrial, or recreational water users;

(C) Agricultural land leveling resulting in water savings due to the more efficient use of irrigation water for which tax credits are claimed; and

(D)(i) The purchase and installation of water measuring or metering devices used to determine the quantity of water used.

(ii) Installation of such devices shall be considered a conversion from groundwater to surface water for tax credit purposes; and

(9) "Project cost" means the actual expenditure for a project, less any reimbursement received by the approved applicant from cost-share programs.

**History.** Acts 1995, No. 341, § 3; 1999, No. 1050, § 18; 2001, No. 727, § 1; 2011, No. 631, § 1.

**Amendments.** The 2011 amendment added (3) and redesignated the remaining

subdivisions accordingly; deleted "the Revenue Division of" following "means" in (6); and substituted "approved applicant" for "taxpayer" in (9).

## 26-51-1004. Applicability — Effective date.

(a) The tax credits provided by this subchapter shall apply to taxable years beginning on or after January 1, 1996, and all taxable years thereafter.

(b) Any approved applicant claiming a tax credit under this subchapter may not claim a credit under any similar act for any costs related to the same project.

(c) Any tax credit issued to an approved applicant that is a partnership, a limited liability company taxed as a partnership, a Subchapter S corporation, or a fiduciary shall be passed through to the partners, members, or owners, respectively, on a pro rata basis or pursuant to an executed agreement between or among the partners, members, or owners documenting an alternative method for the distribution of the credit.

**History.** Acts 1995, No. 341, §§ 4, 16; 2011, No. 631, § 2.

**Amendments.** The 2011 amendment redesignated former (a)(2) as (b), and (a)(3) as (c); deleted former (b); and, in (b),

substituted "approved applicant" for "taxpayer" and deleted "the Water Resource Conservation and Development Incentives Act of 1985 [repealed] or" preceding "any similar"; and rewrote (c).

## 26-51-1005. Credit granted — Water impoundments.

(a) There shall be allowed a credit against the tax imposed by the Income Tax Act of 1929, § 26-51-101 et seq., to an approved applicant that constructs and installs or restores water impoundments or water control structures of twenty (20) acre-feet or more designed for the

purpose of storing water to be used primarily for agricultural, commercial, or industrial purposes.

(b)(1) The tax credit allowed to each approved applicant shall not exceed the lesser of fifty percent (50%) of the project cost incurred or ninety thousand dollars (\$90,000).

(2)(A) The amount of tax credit allowed to each approved applicant per project that may be used for a taxable year shall not exceed the lesser of:

(i) The amount of individual or corporate income tax otherwise due; or

(ii) Nine thousand dollars (\$9,000).

(B) If the approved applicant is a pass-through entity such as a partnership, a limited liability company taxed as a partnership, a Subchapter S corporation, or a fiduciary, the amount of tax credit that may be used for a taxable year shall not exceed the lesser of:

(i) The aggregate amount of individual or corporate income tax otherwise due by all members of the pass-through entity; or

(ii) Nine thousand dollars (\$9,000).

(3) Any unused credit may be carried over for a maximum of nine (9) consecutive taxable years following the taxable year in which the credit originated.

**History.** Acts 1995, No. 341, § 6; 2001, No. 727, § 2; 2011, No. 631, § 3.

**Amendments.** The 2011 amendment, in (a), deleted “For projects located outside critical groundwater areas” at the beginning and substituted “to an approved applicant who constructs and installs or restores” for “in an amount equal to fifty

percent (50%) of the project cost incurred in the construction and installation or restoration of”; rewrote (b)(1); and added present (b)(2) and redesignated former (b)(2) as (b)(3).

**Cross References.** Federal Subchapter S adopted, § 26-51-409.

## 26-51-1006. [Repealed.]

**Publisher’s Notes.** This section, concerning credit granted — water impoundments within critical areas, was repealed

by Acts 2011, No. 631, § 4. The section was derived from Acts 1995, No. 341, § 7; 2001, No. 727, § 3.

## 26-51-1007. Credit granted — Surface water conversion outside critical areas.

(a) For projects located outside critical groundwater areas, there shall be allowed a credit against the tax imposed by the Income Tax Act of 1929, § 26-51-101 et seq., to an approved applicant for the reduction of groundwater use by substitution of surface water for water used for industrial, commercial, agricultural, or recreational purposes.

(b)(1) The tax credit allowed to each approved applicant shall not exceed the lesser of ten percent (10%) of the project cost incurred or twenty seven thousand dollars (\$27,000).

(2)(A) The amount of tax credit allowed to each approved applicant per project that may be used for a taxable year may not exceed the lesser of:



(i) The amount of individual or corporate income tax otherwise due; or

(ii) Nine thousand dollars (\$9,000).

(B) If the approved applicant is a pass-through entity such as a partnership, a limited liability company taxed as a partnership, a Subchapter S corporation, or a fiduciary, the amount of tax credit that may be used for a taxable year shall not exceed the lesser of:

(i) The aggregate amount of individual or corporate income tax otherwise due by all members of the pass-through entity; or

(ii) Nine thousand dollars (\$9,000).

(3) Any unused tax credit may be carried over for a maximum of two (2) consecutive taxable years following the taxable year in which the credit originated.

**History.** Acts 1995, No. 341, § 8; 2011, No. 631, § 5.

**Amendments.** The 2011 amendment substituted “to an approved applicant” for “in an amount equal to ten percent (10%)

of the project cost incurred” in (a); rewrote (b)(1); and inserted present (b)(2) and redesignated former (b)(2) as (b)(3).

**Cross References.** Federal Subchapter S adopted, § 26-51-409.

## **26-51-1008. Credit granted — Surface water conversion within critical areas.**

(a) For projects located within critical groundwater areas, there shall be allowed a credit against the tax imposed by the Income Tax Act of 1929, § 26-51-101 et seq., to an approved applicant for the reduction of groundwater use by substitution of surface water for water used for industrial, commercial, agricultural, or recreational purposes.

(b)(1) For agricultural or recreational projects, there shall be allowed a tax credit to each approved applicant not to exceed the lesser of fifty percent (50%) of the project cost incurred or twenty seven thousand dollars (\$27,000).

(2)(A) The amount of tax credit allowed to each approved applicant per project that may be used for a taxable year may not exceed the lesser of:

(i) The amount of individual or corporate income tax otherwise due; or

(ii) Nine thousand dollars (\$9,000).

(B) If the approved applicant is a pass-through entity such as a partnership, a limited liability company taxed as a partnership, a Subchapter S corporation, or a fiduciary, the amount of tax credit that may be used for a taxable year shall not exceed the lesser of:

(i) The aggregate amount of individual or corporate income tax otherwise due by all members of the pass-through entity; or

(ii) Nine thousand dollars (\$9,000).

(3) Any unused tax credit may be carried over for a maximum of two (2) consecutive taxable years following the taxable year in which the credit originated.

(c)(1) For industrial or commercial projects, there shall be allowed a tax credit to each approved applicant not to exceed the lesser of fifty

percent (50%) of the project cost incurred or one million dollars (\$1,000,000).

(2)(A) The amount of tax credit allowed to each approved applicant per project that may be used for a taxable year may not exceed the lesser of:

(i) The amount of individual or corporate income tax otherwise due; or

(ii) Two hundred thousand dollars (\$200,000).

(B) If the approved applicant is a pass-through entity such as a partnership, a limited liability company taxed as a partnership, a Subchapter S corporation, or a fiduciary, the amount of tax credit that may be used for a taxable year shall not exceed the lesser of:

(i) The aggregate amount of individual or corporate income tax otherwise due by all members of the pass-through entity; or

(ii) Nine thousand dollars (\$9,000).

(3) Any unused tax credit may be carried over for a maximum of four

(4) consecutive taxable years following the taxable year in which the credit originated.

**History.** Acts 1995, No. 341, § 9; 1997, No. 421, § 1; 1999, No. 765, § 1; 2011, No. 631, § 6.

**Amendments.** The 2011 amendment substituted “to an approved applicant” for

“in an amount equal to fifty percent (50%) of the project cost incurred” in (a); rewrote (b); and added (c).

**Cross References.** Federal Subchapter S adopted, § 26-51-409.

## **26-51-1009. Credit granted — Land leveling for water conservation.**

(a) There shall be allowed a credit against the tax imposed by the Income Tax Act of 1929, § 26-51-101 et seq., to an approved applicant for agricultural land leveling to conserve irrigation water.

(b)(1) The tax credit allowed to each approved applicant shall not exceed the lesser of ten percent (10%) of the project cost incurred or twenty seven thousand dollars (\$27,000).

(2)(A) The amount of tax credit allowed to each approved applicant per project that may be used for a taxable year may not exceed the lesser of:

(i) The amount of individual or corporate income tax otherwise due; or

(ii) Nine thousand dollars (\$9,000).

(B) If the approved applicant is a pass-through entity such as a partnership, a limited liability company taxed as a partnership, a Subchapter S corporation, or a fiduciary, the amount of tax credit that may be used for a taxable year shall not exceed the lesser of:

(i) The aggregate amount of individual or corporate income tax otherwise due by all members of the pass-through entity; or

(ii) Nine thousand dollars (\$9,000).

(3) Any unused tax credit may be carried over for a maximum of two

(2) consecutive taxable years following the taxable year in which the credit originated.

**History.** Acts 1995, No. 341, § 10; 2011, No. 631, § 7.

**Amendments.** The 2011 amendment substituted “to an approved applicant” for “in an amount equal to ten percent (10%)

of the project cost incurred” in (a); rewrote (b)(1); and added present (b)(2) and redesignated former (b)(2) as (b)(3).

**Cross References.** Federal Subchapter S adopted, § 26-51-409.

## **26-51-1010. Application and approval procedure — Administration.**

(a)(1) The Arkansas Natural Resources Commission shall promulgate such rules and regulations as may be deemed necessary in administering projects submitted with the intent of qualifying for the tax incentives provided for in this subchapter.

(2) The rules shall not be adopted without the approval of the Department of Finance and Administration.

(b)(1) The commission may charge a reasonable application fee for the processing of tax credit applications.

(2) All fees collected shall be deposited into the Arkansas Water Development Fund.

(c)(1) The commission may issue a tax credit approval certificate for those applications proposing projects that meet the requirements of this subchapter and rules promulgated thereunder.

(2) An approved applicant must file the certificate of tax credit approval with the approved applicant’s income tax return for the first year in which the approved applicant claims a tax credit under this subchapter.

(d)(1) Upon completion of the project, the approved applicant shall apply to the commission for a certificate of completion.

(2) The commission shall issue a tax credit certificate of completion to any approved applicant meeting the requirements of this subchapter and the rules promulgated by the department.

(3) After receiving a certificate of completion, the approved applicant shall file the certificate of completion with the first tax return filed after issuance of the certificate of completion.

(e) The department shall promulgate such rules and regulations as may be deemed necessary to carry out the tax credit provisions of this subchapter.

**History.** Acts 1995, No. 341, §§ 5, 11; 2011, No. 631, § 8.

**Amendments.** The 2011 amendment deleted former (c)(2) and (3) and redesignated former (c)(4)(A) as (c)(2); and deleted former (c)(4)(B); and, in (c)(2), sub-

stituted “An approved applicant” for “A taxpayer” or variant; and added present (d) and redesignated former (d) as (e).

**Cross References.** Arkansas Water Development Fund, § 15-22-507.

## **26-51-1011. Development, operation, and tax credits.**

(a) Project activities shall meet or exceed those standards as established by the Arkansas Natural Resources Commission, and the project must be maintained for a minimum life of ten (10) years after issuance of a certificate of completion.



(b) Project costs incurred after issuance of a tax credit approval certificate may be claimed for tax credit, subject to other limitations contained in this subchapter.

(c)(1) All projects must be completed within three (3) years of the date of the certificate of tax credit approval.

(2) If the approved applicant does not complete the project within the period provided in subdivision (c)(1) of this section, all tax credits claimed shall be repaid to the Department of Finance and Administration, and the project will be disallowed as a project for tax credit purposes.

(d)(1) If the approved applicant terminates the project prior to expiration of the minimum project life, the approved applicant shall provide written notification to the commission and the department. In addition, the approved applicant shall file an amended tax return and repay the amount of tax credit claimed that was not allowable.

(2) If the commission determines that the approved applicant has terminated the project, it shall notify the department.

(e)(1) Upon the termination of a project, the approved applicant shall not be allowed any further tax credits provided in this subchapter, and the department shall recapture the pro rata share of any tax credits claimed under this subchapter for the period of termination.

(2) The pro rata share for recapture of the disallowed tax credits shall be determined by dividing the period of time from termination of the project until the expiration of the minimum life of the project by the required minimum life of the project times the tax credit claimed.

(f) Notwithstanding the provisions of § 26-18-306, the department may make necessary assessments to recapture disallowed tax credits for a period of three (3) years from the date of expiration of the minimum life of the project.

(g) For purposes of this subchapter, the recordkeeping provisions of § 26-18-506 requiring an approved applicant to maintain records for six (6) years after a return is filed shall be extended to require the approved applicant claiming a credit under this subchapter to maintain the required records for the required minimum life of the project plus three (3) years.

**History.** Acts 1995, No. 341, § 12; 2011, No. 631, § 9.

**Amendments.** The 2011 amendment substituted "Arkansas Natural Resources Commission" for "commission" in (a); sub-

stituted "approved applicant" for "taxpayer" throughout the section; and substituted "Department of Finance and Administration" for "department" in (c)(2).

## **26-51-1012. Deduction for project costs above tax credit.**

(a) In determining net income for Arkansas income tax purposes, any approved applicant qualifying for the credits provided in this subchapter shall also be entitled to a deduction in an amount equal to the project cost less the total amount of credits to which the approved applicant is entitled under this subchapter.

(b) The deduction provided for in this subchapter shall be taken only during the year in which the expenditures for the project were actually incurred.

**History.** Acts 1995, No. 341, § 13; substituted “approved applicant” for “taxpayer” twice in (a).  
2011, No. 631, § 10.

**Amendments.** The 2011 amendment

### **26-51-1013. Annual compilation of credits — Expiration of the subchapter.**

(a) The Department of Finance and Administration shall compile the total amount of tax credits used pursuant to the provisions of this subchapter for each calendar year.

(b)(1) When the total amount of tax credits used pursuant to the provisions of this subchapter exceeds ten million dollars (\$10,000,000) in any calendar year, the tax credits established by this subchapter shall expire on December 31 of the calendar year following the calendar year in which the tax credits used pursuant to the provisions of this subchapter exceeded ten million dollars (\$10,000,000).

(2) However, any approved applicant issued a certificate of tax credit approval on or prior to December 31 may complete the project and shall be entitled to the tax credits provided under this subchapter without regard to the fact that the availability of the tax credits has otherwise expired.

**History.** Acts 1995, No. 341, § 14; substituted “approved applicant” for “taxpayer having been” in (b)(2).  
1999, No. 765, § 2; 2011, No. 631, § 11.

**Amendments.** The 2011 amendment

### **26-51-1014. Construction.**

No part or segment of this subchapter shall be interpreted to in any way alter or amend the permit requirements, reporting requirements, allocation procedures, or other requirements set forth in Title 15, Chapter 22.

**History.** Acts 1995, No. 341, § 15.

## **SUBCHAPTER 11 — DONATIONS OR SALES OF EQUIPMENT TO EDUCATIONAL INSTITUTIONS**

### **SECTION.**

26-51-1101. Definitions.

26-51-1102. Credit granted.

26-51-1103. Limit on total credit.

### **SECTION.**

26-51-1104. Documentation required.

26-51-1105. Rules and regulations.

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**Effective Dates.** Acts 1985, No. 469, 1, 1985.

§ 7: effective for tax years on or after Jan. Acts 1985, No. 759, § 7: effective for tax

years beginning on or after Jan. 1, 1985.

Acts 2007, No. 1045, § 8: Apr. 4, 2007. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that the development of products and services derived from research activities involving Arkansas institutions of higher education and businesses and entrepreneurs involved in these research activities form the basis for much needed economic development that capitalizes on knowledge acquired through research; that the resulting intellectual property that is the foundation for business development presents opportunities for the State of Arkansas to compete effectively in the changing global economy; that the opportunities available for the growth of knowledge-based busi-

nesses are dependent upon the State of Arkansas creating an environment that allows these new businesses to grow and succeed in Arkansas; and that this act is immediately necessary to develop and retain these knowledge-based businesses in the State of Arkansas. Therefore, an emergency is declared to exist and this act being necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

### RESEARCH REFERENCES

**U. Ark. Little Rock L.J.** Legislative Survey, Taxation, 8 U. Ark. Little Rock L.J. 601.

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### 26-51-1101. Definitions.

As used in this subchapter:

(1) "Accredited institution of higher education" means a four-year public college or university that offers bachelor's degrees and is recognized by the Department of Higher Education for credit;

(2) "Cost" means:

(A) In the case of a donation or sale below cost by a wholesale or retail business, the amount actually paid by the wholesaler or retailer to the supplier for the machinery or equipment; or

(B) In the case of a donation or sale below cost by a manufacturer of machinery or equipment, the enhanced value of the materials used to produce the machinery or equipment, which shall be deemed to be the lowest price at which the manufacturer sells the machinery or equipment;

(3) "Machinery and equipment" means tangible personal property used in connection with a qualified education program or a qualified research program that has been approved for a tax credit under rules and regulations prescribed by the Department of Finance and Administration;

(4) "New" means the machinery and equipment are state-of-the-art machinery and equipment that have:



(A) Never been used except for normal testing by the manufacturer to ensure that the machinery or equipment is of a proper quality and in good working order; or

(B) Been used by the retailer or wholesaler solely for the purpose of demonstrating the product to customers for sale;

(5) "Qualified education program" means a program conducted by a qualified educational institution under rules prescribed by the Department of Higher Education for programs in colleges, universities, or junior colleges, by the Department of Workforce Education for programs in vocational technical training schools and by the Department of Education for programs in elementary or secondary schools, all of which programs are for the purpose of promoting the use of new machinery and equipment for classroom, laboratory, and other educational instruction;

(6) "Qualified educational institution" means:

(A) Any public university, college, junior college, or vocational technical training school supported by the State of Arkansas;

(B) Any private university, college, junior college, or vocational technical training school located in Arkansas and qualified for tax-exempt status under the Income Tax Act of 1929, § 26-51-101 et seq.; or

(C) Any public elementary or secondary school;

(7) "Qualified research expenditures" means the sum of any amounts that are paid or incurred by a taxpayer during the taxable year in funding a qualified research program that has been approved for tax credit treatment under rules promulgated by the Department of Finance and Administration;

(8) "Qualified research program" means a program of applied or basic research undertaken by a qualified educational institution pursuant to rules jointly prescribed by the Arkansas Science and Technology Authority and the Department of Higher Education under § 15-3-110;

(9) "Research park authority" means a public entity created under the Research Park Authority Act, § 14-144-101 et seq., to provide facilities and support for businesses engaged in research and development in pursuit of economic development opportunities; and

(10) "State-of-the-art-machinery and equipment" means machinery and equipment that is of the same type, design, and capability as like machinery and equipment that is currently sold or manufactured by the donee for sale to customers.

**History.** Acts 1985, No. 469, § 1; 1985, No. 759, § 1; A.S.A. 1947, § 84-2021.31; Acts 2007, No. 1045, § 2.

**26-51-1102. Credit granted.**

(a)(1) There is granted a credit against a taxpayer's Arkansas corporate income tax or Arkansas individual income tax for donations by any taxpayer of new machinery or equipment and for sales below cost of machinery and equipment by taxpayers to qualified educational institutions in connection with a qualified education program or a qualified research program.

(2) The amount of the credit granted by this section shall be:

(A) In the case of a donation, thirty-three percent (33%) of the cost of the machinery and equipment donated; and

(B) In the case of a sale below cost, thirty-three (33%) of the amount by which the cost is reduced.

(b) There is granted a credit against a taxpayer's Arkansas corporate income tax or Arkansas individual income tax equal to thirty-three percent (33%) of the qualified research expenditures of a taxpayer in qualified research programs.

(c)(1) There is granted a credit against a taxpayer's Arkansas corporate income tax or Arkansas individual income tax equal to thirty-three percent (33%) of a donation made to an accredited institution of higher education to support a research park authority.

(2) In order to claim this credit authorized by subdivision (c)(1) of this section, a donation made in support of a research park authority shall:

(A) Be consistent with the research and development plan approved by the Board of Directors of the Arkansas Science and Technology Authority, as evidenced by a letter of support from the President of the Arkansas Science and Technology Authority; and

(B) Support either directly or indirectly research subject to being funded by one (1) or more federal agencies, as enumerated in § 15-3-205(1).

**History.** Acts 1985, No. 469, §§ 2, 3; 2021.32, 84-2021.33; Acts 2007, No. 1045, 1985, No. 759, §§ 2, 3; A.S.A. 1947, §§ 84- § 3.

**26-51-1103. Limit on total credit.**

(a) Total credits for qualified research expenditures, donations, and sales under this subchapter shall be allowed up to one hundred percent (100%) of the net tax liability of the taxpayer after all other credits and reductions in tax have been calculated.

(b) The credit shall be claimed in the tax year of the qualified research expenditure, donation, or sale. However, all or part of any unused credit may be carried over to and claimed in succeeding tax years until the credits are exhausted or until the end of the nine (9) tax years succeeding the tax year of the qualified research expenditure, donation, or sale, whichever occurs earlier. In no event shall a taxpayer claim a credit under this subchapter for any tax year in excess of one hundred percent (100%) of the net tax due after all other credits and reductions in tax have been calculated.

(c) Any person claiming any credit granted by this subchapter for any expense or contribution shall not take any deduction under the Arkansas income tax law for the same expense or contribution.

**History.** Acts 1985, No. 469, § 4; 1985, No. 759, § 4; A.S.A. 1947, § 84-2021.34; Acts 2007, No. 1607, § 1.

### **26-51-1104. Documentation required.**

(a) To claim the credit granted by § 26-51-1102, the taxpayer must provide the following for each piece of machinery and equipment donated or sold below cost:

(1) A statement from the receiving qualified educational institution that it has received the machinery or equipment; that the machinery or equipment is new machinery or equipment within the meaning of this subchapter; that it received the machinery or equipment as a donation or, if it purchased the machinery or equipment below cost, a statement of the amount paid for the machinery or equipment; and that the machinery or equipment has been donated or sold to the qualified educational institution for use in a qualified education program or a qualified research program; and

(2) In the case of a donation or sale by a retail or wholesale business, a copy of the invoice from the business' supplier showing the actual cost of the machinery or equipment. In the case of a donation or sale below cost by a manufacturer, a copy of the manufacturer's wholesale price list showing the lowest price of the machinery or equipment for which credit is claimed.

(b) To claim the credit granted by § 26-51-1102, the taxpayer must show that the Arkansas Science and Technology Authority and the Department of Higher Education have approved the qualified research expenditure as a part of a qualified research program.

(c) Copies of each of the above documents shall be filed by the taxpayer with his or her return as an attachment to the form prescribed by the Director of the Department of Finance and Administration.

**History.** Acts 1985, No. 469, § 5; 1985, No. 759, § 5; A.S.A. 1947, § 84-2021.35.

### **26-51-1105. Rules and regulations.**

The Director of the Department of Finance and Administration, the Director of the Department of Higher Education, the Director of the Department of Career Education, the Director of the Department of Workforce Education, and the President of the Arkansas Science and Technology Authority shall promulgate such reasonable rules and regulations as they shall deem necessary and appropriate to carry out the purposes of this subchapter.



**History.** Acts 1985, No. 469, § 6; 1985, No. 759, § 6; A.S.A. 1947, § 84-2021.36.

## SUBCHAPTER 12 — STEEL MILL TAX INCENTIVES

### SECTION.

26-51-1201. Definition.  
 26-51-1202. Certification required.  
 26-51-1203. Net operating loss deduction  
     — Carry forward.  
 26-51-1204 — 26-51-1210. [Reserved.]  
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### SECTION.

26-51-1212. Certification required —  
     Contents.  
 26-51-1213. Net operating loss deduction  
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 26-51-1214. Sales of natural gas and elec-  
     tricity — Exemption.

**Effective Dates.** Acts 1987, No. 48, § 7; Feb. 16, 1987. Emergency clause provided: "Unemployment in Arkansas has reached emergency proportions and can only be remedied by attracting new industry. Offering tax incentives is an effective method of attracting business to Arkansas. This Act offers incentives which will reduce unemployment levels. Therefore, an emergency is declared to exist and this Act, being necessary for the immediate preservation of the public peace, health and safety, shall be in full force and effective from and after its passage and approval."

Acts 1991, No. 136, § 8; Feb. 13, 1991. Emergency clause provided: "Unemployment in Arkansas has reached emergency proportions and can only be remedied by attracting new industry. Offering tax incentives is an effective method of attracting business to Arkansas. This Act offers

incentives which will reduce unemployment levels. Therefore, an emergency is declared to exist and this Act, being necessary for the immediate preservation of the public peace, health and safety, shall be in full force and effective from and after its passage and approval."

Acts 1991, No. 137, § 8; Feb. 13, 1991. Emergency clause provided: "Unemployment in Arkansas has reached emergency proportions and can only be remedied by attracting new industry. Offering tax incentives is an effective method of attracting business to Arkansas. This Act offers incentives which will reduce unemployment levels. Therefore, an emergency is declared to exist and this Act, being necessary for the immediate preservation of the public peace, health and safety, shall be in full force and effective from and after its passage and approval."

### 26-51-1201. Definition.

As used in §§ 26-51-1201 — 26-51-1203, "invested" includes expenditures made from the proceeds of bonds, including interim notes or other evidence of indebtedness, issued by a municipality, county, or an agency or instrumentality of a municipality, county, or the State of Arkansas, if the obligation to repay the bonds, including interest on the bonds, is a legal, binding obligation, directly or indirectly, of the taxpayer.

**History.** Acts 1987, No. 48, § 1.

**Publisher's Notes.** Acts 1987, No. 48, § 1, is also codified as § 26-52-901(1).

**26-51-1202. Certification required.**

(a) To claim the benefits of §§ 26-51-1201 — 26-51-1203, a taxpayer must obtain a certification from the Director of the Arkansas Economic Development Commission certifying to the Revenue Division of the Department of Finance and Administration that the taxpayer:

(1) Operates a steel mill in Arkansas which began production after February 16, 1987; and

(2) Has invested, after February 16, 1987, in excess of one hundred twenty million dollars (\$120,000,000) in the steel mill, which investment expenditure is for one (1) of the following:

(A) Property purchased for use in the construction of a building or buildings or any addition or improvement thereon to house the steel mill;

(B) Machinery and equipment to be located in or in connection with the steel mill. Motor vehicles of a type subject to registration shall not be considered as machinery and equipment; or

(C) Project planning costs or construction labor costs, including on-site direct labor and supervision, whether employed by a contractor or the project owner; architectural fees, engineering fees, or both; right-of-way purchases; utility extensions; site preparation; parking lots; disposal or containment systems; water and sewer treatment systems; rail spurs; streets and roads; purchase of mineral rights; land; buildings; building renovation; production, processing, and testing equipment; freight charges; building demolition; material handling equipment; drainage systems; water tanks and reservoirs; storage facilities; equipment rental; contractor's cost plus fees; builders risk insurance; original spare parts; job administrative expenses; office furnishings and equipment; rolling stock; capitalized start-up costs as recognized by generally accepted accounting principles; and other costs related to the construction.

(b) As used in subdivision (a)(2)(C) of this section, "production and processing equipment" includes machinery and equipment essential for the receiving, storing, processing, and testing of raw materials and the production, storage, testing, and shipping of finished products, including facilities for the production of steam, electricity, chemicals, and other materials that are essential to the manufacturing process, but which are consumed in the manufacturing process and do not become essential components of the finished product.

**History.** Acts 1987, No. 48, § 1; 1997, No. 540, § 89.

**Publisher's Notes.** Acts 1987, No. 48, § 1, is also codified as § 26-52-902(a), (b).

**26-51-1203. Net operating loss deduction — Carry forward.**

(a) Taxpayers qualified under § 26-51-1202(a) and (b), entitled to a net operating loss deduction as provided in § 26-51-427, may carry forward that deduction to the next succeeding taxable year following the year of the net operating loss and annually thereafter for a total

period of ten (10) years or until the net operating loss has been exhausted, whichever is earlier.

(b) The net operating loss deduction must be carried forward in the order named above.

**History.** Acts 1987, No. 48, § 2.

## RESEARCH REFERENCES

**ALR.** Construction and application of net operation loss deductions. 33 state corporate income tax statutes allow- A.L.R.5th 509.

### 26-51-1204 — 26-51-1210. [Reserved.]

### 26-51-1211. Definitions.

As used in §§ 26-51-1211 — 26-51-1214:

(1) "Invested" includes expenditures made from the proceeds of bonds including interim notes or other evidence of indebtedness issued by a municipality, county, or an agency or instrumentality of a municipality, county, or the State of Arkansas, if the obligation to repay the bonds, including interest thereon, is a legal, binding obligation, directly or indirectly, of the taxpayer;

(2) "Production and processing equipment" includes machinery and equipment essential for the receiving, storing, processing, and testing of raw materials and the production, storage, testing, and shipping of finished products, including facilities for the production of steam, electricity, chemicals, and such other materials that are essential to the manufacturing process, but which are consumed in the manufacturing process and do not become essential components of the finished product; and

(3) A taxpayer is a "qualified manufacturer of steel" if:

(A) The taxpayer is a natural person, company, or corporation engaged in the manufacture, refinement, or processing of steel; and

(B) More than fifty percent (50%) of the electricity or natural gas consumed in the manufacture, refinement, or processing of steel by the taxpayer is used either:

(i) To power an electric arc furnace or furnaces, continuous casting equipment, or rolling mill equipment in connection with melting, continuous casting, or rolling of steel; or

(ii) In the preheating of steel for processing through a rolling mill.

**History.** Acts 1991, No. 136, § 1; 1991, 136 and 137, § 1, are also codified as No. 137, § 1. § 26-52-911.

**Publisher's Notes.** Acts 1991, Nos.

### 26-51-1212. Certification required — Contents.

To claim the benefits of §§ 26-51-1211 — 26-51-1214, a taxpayer must obtain certification prior to June 30, 1994, from the Director of the



Arkansas Economic Development Commission certifying to the Revenue Division of the Department of Finance and Administration that:

(1) The taxpayer is a "qualified manufacturer of steel" as defined in § 26-51-1211; or

(2)(A) The taxpayer operates a steel mill in Arkansas which began production after February 13, 1991; and

(B) The taxpayer has invested, after February 13, 1991, in excess of one hundred twenty million dollars (\$120,000,000) in the steel mill, which investment expenditure is for one (1) of the following:

(i) Property purchased for use in the construction of a building or buildings or any addition or improvement thereon to house the steel mill;

(ii) Machinery and equipment to be located in or in connection with the steel mill. Motor vehicles of a type subject to registration shall not be considered as machinery and equipment; or

(iii) Project planning costs; construction labor costs, including on-site direct labor and supervision, whether employed by a contractor or the project owner; architectural or engineering fees; right-of-way purchases; utility extensions; site preparation; parking lots; disposal or containment systems; water and sewer treatment systems; rail spurs; streets and roads; purchase of mineral rights; land; buildings; building renovation; production, processing, and testing equipment; freight charges; building demolition; material handling equipment; drainage systems; water tanks and reservoirs; storage facilities; equipment rental; contractor's cost plus fees; builders risk insurance; original spare parts; job administration expenses; office furnishings and equipment; rolling stock; capitalized start-up costs as recognized by generally accepted accounting principles; and other costs related to the construction.

**History.** Acts 1991, No. 136, § 2; 1991, 136 and 137, § 2, are also codified as No. 137, § 2; 1997, No. 540, § 90. § 26-52-912.

**Publisher's Notes.** Acts 1991, Nos.

### **26-51-1213. Net operating loss deduction — Carry forward.**

(a) Taxpayers qualified under § 26-51-1212(2) and entitled to a net operating loss deduction as provided in § 26-51-427 may carry forward that deduction to the next-succeeding taxable year following the year of such net operating loss and annually thereafter for a total period of ten (10) years or until such net operating loss has been exhausted, whichever is earlier.

(b) The net operating loss deduction must be carried forward in the order named above.

**History.** Acts 1991, No. 136, § 3; 1991, 136 and 137, § 3 are also codified as No. 137, § 3. § 26-52-913.

**Publisher's Notes.** Acts 1991, Nos.

## RESEARCH REFERENCES

**ALR.** Construction and application of state corporate income tax statutes allowing net operation loss deductions. 33 A.L.R.5th 509.

**26-51-1214. Sales of natural gas and electricity — Exemption.**

(a) Sales of natural gas and electricity to taxpayers qualified under § 26-51-1212(1) or § 26-51-1212(2) for use in connection with the steel mill shall be exempt from the Arkansas gross receipts tax levied by the Arkansas Gross Receipts Act of 1941, § 26-52-101 et seq., and the Arkansas compensating use tax, levied by the Arkansas Compensating Tax Act of 1949, § 26-53-101 et seq., and any other state or local tax administered under those acts.

(b) The benefits of exemptions granted pursuant to this section shall become effective on July 1, 1991.

**History.** Acts 1991, No. 136, § 4; 1991, No. 137, § 4. 136 and 137, § 4, are also codified as § 26-52-914.

**Publisher's Notes.** Acts 1991, Nos.

**SUBCHAPTER 13 — WINNINGS WITHHOLDING ACT**

## SECTION.

- 26-51-1301. Title.
- 26-51-1302. Definitions.
- 26-51-1303. Amount deducted and withheld for racing winnings — Credit.
- 26-51-1304. Administration.
- 26-51-1305. Liability of franchise holders.
- 26-51-1306. Withholding return and payment for racing winnings.
- 26-51-1307. Annual statement of withholding for racing winnings.

## SECTION.

- 26-51-1308. Duties of franchise holders and payees.
- 26-51-1309. Gaming winnings tax — Withholding and remittance.
- 26-51-1310. Withholding return, reporting, and payment — Electronic games of skill.

**Effective Dates.** Acts 1987, No. 899, § 8: Apr. 13, 1987. Emergency clause provided: "An emergency is hereby found and determined by the General Assembly that the State of Arkansas is in serious danger of losing revenues which are necessary to provide adequate funding for schools and other essential services required by the citizens of this State and the provisions of this Act are necessary to avoid substantial reduction in State revenues. Therefore, an emergency is declared to exist and this Act being necessary for the preservation of the public peace, health and safety shall be in

full force and effect from and after its passage and approval."

Acts 2007, No. 732, § 9: May 1, 2007. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that state revenues will be lost; that irreparable harm will result since those lost revenues cannot be recouped; and that this act is immediately necessary because the revenues collected under this act are necessary to fund vital state needs. Therefore, an emergency is declared to exist and this act being necessary for the preservation of the

public peace, health, and safety shall become effective on May 1, 2007.”

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### **26-51-1301. Title.**

This subchapter may be cited as the “Winnings Withholding Act of 1987”.

**History.** Acts 1987, No. 899, § 1.

### **26-51-1302. Definitions.**

As used in this subchapter:

(1) “Gaming winnings” means winnings from electronic games of skill based on the amount paid with respect to the wager without reduction for the amount of the wager; and

(2) “Racing winnings” means winnings from live dog racing or horse racing based on the amount paid with respect to the wager less the amount of the wager.

**History.** Acts 1987, No. 899, § 2; 2007, No. 732, § 1.

### **26-51-1303. Amount deducted and withheld for racing winnings — Credit.**

(a) Every holder of a franchise to conduct dog racing or horse racing in this state making any single payment of racing winnings on a single wagering transaction of more than one thousand dollars (\$1,000), if the amount of the racing winnings is at least three hundred (300) times as large as the amount wagered, shall deduct and withhold an amount equal to seven percent (7%) from the racing winnings.

(b) The amount deducted and withheld from any person receiving racing winnings during the income year shall be credited against the tax liability of that person under the Income Tax Act of 1929, § 26-51-101 et seq.

**History.** Acts 1987, No. 899, § 2; 2007, No. 732, § 2; 2009, No. 655, § 8. inserted “racing” following “amount of the” in (a).

**Amendments.** The 2009 amendment

### **26-51-1304. Administration.**

This subchapter shall be administered in accordance with the Arkansas Tax Procedure Act, § 26-18-101 et seq.

**History.** Acts 1987, No. 899, § 7.



**26-51-1305. Liability of franchise holders.**

Every holder of a franchise to conduct dog racing, horse racing, or electronic games of skill shall be liable for amounts required to be deducted and withheld by this subchapter regardless of whether the amounts were in fact deducted and withheld.

**History.** Acts 1987, No. 899, § 4; 2007, No. 732, § 3.

**26-51-1306. Withholding return and payment for racing winnings.**

Every franchise holder required to deduct and withhold income tax from racing winnings under this subchapter shall file, within sixty (60) days after the termination of its racing season, a withholding return as prescribed by the Director of the Department of Finance and Administration and pay over to the director the full amount required to be deducted and withheld from the racing winnings by the franchise holder for the income year.

**History.** Acts 1987, No. 899, § 5; 2007, No. 732, § 4.

**26-51-1307. Annual statement of withholding for racing winnings.**

(a) Every franchise holder required to deduct and withhold income tax from racing winnings under this subchapter shall file an annual statement of withholding for each person receiving racing winnings subject to withholding under this subchapter.

(b)(1) The annual statement shall be in the form prescribed by the Director of the Department of Finance and Administration and shall be filed with the director.

(2) Two (2) copies of the statement shall be furnished to each person who had received racing winnings during the income year before January 31 following the close of the income year.

(c) The statement shall show:

(1) The name and withholding account number of the franchise holder;

(2) The name and address of the person who had received the racing winnings and his or her taxpayer identification number;

(3) The total amount of the racing winnings subject to withholding paid by the franchise holder to the recipient of the racing winnings;

(4) The total amount withheld from the recipient's racing winnings by the franchise holder pursuant to this subchapter for the income year; and

(5) Such other information as the director shall require by rule or regulation.

**History.** Acts 1987, No. 899, § 6; 2007, inserted “racing” following “recipient of the” in (c)(3).  
No. 732, § 5; 2009, No. 655, § 9.

**Amendments.** The 2009 amendment

### **26-51-1308. Duties of franchise holders and payees.**

(a) Every holder of a franchise to conduct dog racing, horse racing, or electronic games of skill who fails to withhold or pay to the Director of the Department of Finance and Administration any sums required by this subchapter to be withheld and paid shall be personally and individually liable therefor. Any sum or sums withheld in accordance with the provisions of this subchapter shall be deemed to be held in trust for the State of Arkansas and shall be recorded by the franchise holder in a ledger account so as to clearly indicate the amount of tax withheld and that the amount is the property of the State of Arkansas.

(b) Every person who is to receive a payment of racing winnings or gaming winnings that are subject to this subchapter shall furnish the person making the payment a statement, made under penalties of perjury, containing the name, address, and taxpayer identification number of the person receiving the payment and of each person entitled to any portion of the payment.

**History.** Acts 1987, No. 899, §§ 3, 5;  
2007, No. 732, § 6.

### **26-51-1309. Gaming winnings tax — Withholding and remittance.**

(a) There is levied, assessed, and collected a gaming winnings tax of three percent (3%) on any single payment of winnings from electronic games of skill of one thousand two hundred dollars (\$1,200) or more paid on a single electronic game of skill wager.

(b) The holder of a franchise to conduct electronic games of skill shall:

(1) Deduct and withhold the tax from winnings from electronic games of skill upon which the tax is levied by subsection (a) of this section; and

(2) Remit the tax to the Director of the Department of Finance and Administration as provided in § 26-51-1310 and as prescribed by rules promulgated by the director.

**History.** Acts 2007, No. 732, § 7.

### **26-51-1310. Withholding return, reporting, and payment — Electronic games of skill.**

(a) The holder of a franchise to conduct electronic games of skill in this state shall register to withhold the gaming winnings tax under § 26-51-1309 from winnings from electronic games of skill in the manner prescribed by the Director of the Department of Finance and Administration.

(b) The withholding account used to report and remit the withholding on wages shall not be used to report withholding on winnings from electronic games of skill.

(c) A separate account for withholding on winnings from electronic games of skill shall be obtained from the Revenue Division of the Department of Finance and Administration.

(d) Each holder of a franchise to conduct electronic games of skill shall file a monthly return and remit the tax withheld from winnings from electronic games of skill on or before the fifteenth day of the month following the month in which the tax was withheld.

(e) The holder of a franchise to conduct electronic games of skill shall keep the following records and information for three (3) years after the date the tax becomes due or is paid, whichever is later:

(1) The total gaming winnings paid;

(2) The amount of gaming winnings tax withheld and remitted;

(3) The name, address, and social security number or taxpayer identification number of the party in receipt of gaming winnings; and

(4) The name, address, and Arkansas identification number of the holder of a franchise to conduct electronic games of skill.

(f)(1) Gaming winnings are not includable as income on the payee's regular Arkansas income tax return.

(2) The amount of tax paid or withheld on gaming winnings under § 26-51-1309 shall not be claimed under the Income Tax Act of 1929, § 26-51-101 et seq., on an Arkansas income tax return to:

(A) Offset a tax liability;

(B) Create a refund; or

(C) Generate any other type of credit or offset for income tax purposes.

(3) Losses sustained from electronic games of skill wagers are not deductible under the Income Tax Act of 1929, § 26-51-101 et seq., on Arkansas income tax returns.

**History.** Acts 2007, No. 732, § 8.

## **SUBCHAPTER 14 — APPORTIONMENT AND ALLOCATION OF NET INCOME OF FINANCIAL INSTITUTIONS**

### **SECTION.**

26-51-1401. Apportionment and allocation.

26-51-1402. Definitions.

### **SECTION.**

26-51-1403. Receipts factor.

26-51-1404. Property factor.

26-51-1405. Payroll factor.

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**Effective Dates.** Acts 1995, No. 495,  
§ 4: applicable for taxable years beginning on or after January 1, 1996.



## RESEARCH REFERENCES

**Am. Jur.** 71 Am. Jur. 2d State Tax.  
§ 431.

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**26-51-1401. Apportionment and allocation.**

(a) Except as otherwise specifically provided, a financial institution whose business activity is taxable both within and without this state shall allocate and apportion its net income as provided in this subchapter. All items of nonbusiness income, income which is not includable in the apportionable income tax base, shall be allocated pursuant to the provisions of §§ 26-51-704 — 26-51-708. A financial institution organized under the laws of a foreign country, the Commonwealth of Puerto Rico, or a territory or possession of the United States whose effectively connected income, as defined under the Internal Revenue Code, 26 U.S.C. § 1 et seq., as in effect January 1, 1995, is taxable both within this state and within another state, other than the state in which it is organized, shall allocate and apportion its net income as provided in this subchapter.

(b)(1) All business income, income which is includable in the apportionable income tax base, shall be apportioned to this state by multiplying such income by the apportionment percentage.

(2) The apportionment percentage is determined by adding the taxpayer's receipts factor as described in § 26-51-1403, property factor as described in § 26-51-1404, and payroll factor as described in § 26-51-1405 together and dividing the sum by three (3). If one (1) of the factors is missing, the two (2) remaining factors are added and the sum is divided by two (2). If two (2) of the factors are missing, the remaining factor is the apportionment percentage. A factor is missing if both its numerator and denominator are zero, but it is not missing merely because its numerator is zero.

(c) Each factor shall be computed according to the method of accounting, cash or accrual basis, used by the taxpayer for the taxable year.

(d) If the allocation and apportionment provisions of this subchapter do not fairly represent the extent of the taxpayer's business activity in this state, the taxpayer may petition for, or the Director of the Department of Finance and Administration may require, in respect to all or any part of the taxpayer's business activity, if reasonable:

(1) Separate accounting;

(2) The exclusion of any one (1) or more of the factors;

(3) The inclusion of one (1) or more additional factors which will fairly represent the taxpayer's business activity in this state; or

(4) The employment of any other method to effectuate an equitable allocation and apportionment of the taxpayer's income.

**History.** Acts 1995, No. 495, § 1.

**26-51-1402. Definitions.**

As used in this subchapter, unless the context otherwise requires:

(1) "Billing address" means the location indicated in the books and records of the taxpayer on the first day of the taxable year, or on such later date in the taxable year when the customer relationship began, as the address where any notice, statement, and/or bill relating to a customer's account is mailed;

(2) "Borrower or credit card holder located in this state" means:

(A) A borrower, other than a credit card holder, that is engaged in a trade or business which maintains its commercial domicile in this state; or

(B) A borrower that is not engaged in a trade or business or a credit card holder whose billing address is in this state;

(3) "Commercial domicile" means:

(A) The headquarters of the trade or business, that is, the place from which the trade or business is principally managed and directed; or

(B) If a taxpayer is organized under the laws of a foreign country, or of the Commonwealth of Puerto Rico, or any territory or possession of the United States, such taxpayer's commercial domicile shall be deemed for the purposes of this subchapter to be the state of the United States or the District of Columbia from which such taxpayer's trade or business in the United States is principally managed and directed. It shall be presumed, subject to rebuttal, that the location from which the taxpayer's trade or business is principally managed and directed is the state of the United States or the District of Columbia to which the greatest number of employees are regularly connected or out of which they are working, irrespective of where the services of such employees are performed, as of the last day of the taxable year;

(4) "Compensation" means wages, salaries, commissions, and any other form of remuneration paid to employees for personal services that are included in such employee's gross income under the Internal Revenue Code, 26 U.S.C. § 1 et seq., as in effect January 1, 1995. In the case of employees not subject to the Internal Revenue Code, 26 U.S.C. § 1 et seq., as in effect January 1, 1995, e.g., those employed in foreign countries, the determination of whether such payments would constitute gross income to such employees under the Internal Revenue Code, 26 U.S.C. § 1 et seq., as in effect January 1, 1995, shall be made as though such employees were subject to the Internal Revenue Code, 26 U.S.C. § 1 et seq., as in effect January 1, 1995;

(5) "Credit card" means a credit, travel, or entertainment card;

(6) "Credit card issuer's reimbursement fee" means the fee a taxpayer receives from a merchant's bank because one (1) of the persons to whom the taxpayer has issued a credit card has charged merchandise or services to the credit card;

(7) "Employee" means, with respect to a particular taxpayer, any individual who, under the usual common law rules applicable in

determining the employer-employee relationship, has the status of an employee of that taxpayer;

(8) "Financial institution" means:

(A) Any corporation or other business entity registered under state law as a bank holding company or registered under the Bank Holding Company Act of 1956, 12 U.S.C. § 1841 et seq., as amended and in effect January 1, 1995, or registered as a savings and loan holding company under the National Housing Act, 12 U.S.C. § 1701 et seq., as amended and in effect January 1, 1995;

(B) A national bank organized and existing as a national bank association pursuant to the provisions of The National Bank Act, 12 U.S.C. § 21 et seq., as in effect January 1, 1995;

(C) A savings association or federal savings bank as defined in the Federal Deposit Insurance Act, 12 U.S.C. § 1813(b)(1), as in effect January 1, 1995;

(D) Any bank or thrift institution incorporated or organized under the laws of any state;

(E) Any corporation organized under the provisions of 12 U.S.C. §§ 611—631, as in effect January 1, 1995;

(F) Any agency or branch of a foreign depository as defined in 12 U.S.C. § 3101, as in effect January 1, 1995;

(G) A production credit association organized under the Farm Credit Act of 1933, 12 U.S.C. § 1131 et seq., [repealed] as in effect January 1, 1995, all of whose stock held by the Federal Production Credit Corporation has been retired;

(H) Any corporation whose voting stock is more than fifty percent (50%) owned, directly or indirectly, by any person or business entity described in subdivisions (8)(A)-(G) of this section other than an insurance company taxable under § 26-57-601 et seq.;

(I)(i) A corporation or other business entity that derives more than fifty percent (50%) of its total gross income for financial accounting purposes from finance leases.

(ii) As used in this subdivision (8)(I), "finance lease" means any lease transaction which is the functional equivalent of an extension of credit and that transfers substantially all of the benefits and risks incident to the ownership of property. "Finance lease" includes any "direct financing lease" or "leverage lease" that meets the criteria of Financial Accounting Standards Board Statement No. 13, "Accounting for Leases", as in effect January 1, 1995, or any other lease that is accounted for as a financing by a lessor under generally accepted accounting principles.

(iii) For this classification to apply:

(a) The average of the gross income in the current tax year and immediately preceding two (2) tax years must satisfy the more than fifty percent (50%) requirement; and

(b) Gross income from incidental or occasional transactions shall be disregarded; and

(J)(i) Any other person or business entity, other than insurance companies, real estate brokers, or securities dealers taxable under



§ 26-51-205, which derives more than fifty percent (50%) of its gross income from activities that a person described in subdivisions (8)(B)-(G) and (I) of this section is authorized to transact.

(ii) For the purpose of this subdivision (8)(J), the computation of gross income shall not include income from nonrecurring, extraordinary items.

(iii) The Director of the Department of Finance and Administration is authorized to exclude any person from the application of this subdivision (8)(J) upon such person's proving, by clear and convincing evidence, that the income-producing activity of such person is not in substantial competition with those persons described in subdivisions (8)(B)-(G) and (I) of this section;

(9)(A) "Gross rents" means the actual sum of money or other consideration payable for the use or possession of property.

(B) "Gross rents" shall include, but not be limited to:

(i) Any amount payable for the use or possession of real property or tangible property whether designated as a fixed sum of money or as a percentage of receipts, profits, or otherwise;

(ii) Any amount payable as additional rent or in lieu of rent, such as interest, taxes, insurance, repairs, or any other amount required to be paid by the terms of a lease or other arrangement; and

(iii) A proportionate part of the cost of any improvement to real property made by or on behalf of the taxpayer which reverts to the owner or lessor upon termination of a lease or other arrangement. The amount to be included in gross rents is the amount of amortization or depreciation allowed in computing the taxable income base for the taxable year. However, where a building is erected on leased land by or on behalf of the taxpayer, the value of the land is determined by multiplying the gross rent by eight (8) and the value of the building is determined in the same manner as if owned by the taxpayer.

(C) "Gross rents" does not include:

(i) Reasonable amounts payable as separate charges for water and electric service furnished by the lessor;

(ii) Reasonable amounts payable as service charges for janitorial services furnished by the lessor;

(iii) Reasonable amounts payable for storage, provided such amounts are payable for space not designated and not under the control of the taxpayer; and

(D) That portion of any rental payment which is applicable to the space subleased from the taxpayer and not used by it;

(10)(A) "Loan" means any extension of credit resulting from direct negotiations between the taxpayer and its customer, and/or the purchase, in whole or in part, of such extension of credit from another.

(B) "Loan" includes participations, syndications, and leases treated as loans for federal income tax purposes under the Internal Revenue Code, 26 U.S.C. § 1 et seq., as in effect January 1, 1995.

(C) "Loan" does not include:

(i) Properties treated as loans under 26 U.S.C. § 595 [repealed], as in effect January 1, 1995;

- (ii) Futures or forward contracts;
- (iii) Options;
- (iv) Notional principal contracts such as swaps;
- (v) Credit card receivables, including purchased credit card relationships;
- (vi) Noninterest bearing balances due from depository institutions;
- (vii) Cash items in the process of collection;
- (viii) Federal funds sold;
- (ix) Securities purchased under agreements to resell;
- (x) Assets held in a trading account;
- (xi) Securities;
- (xii) Interests in a real estate mortgage investment conduit, as defined by the Internal Revenue Code, 26 U.S.C. § 1 et seq., as in effect January 1, 1995, or other mortgage-backed or asset-backed security; and
- (xiii) Other similar items;

(11) "Loan secured by real property" means that fifty percent (50%) or more of the aggregate value of the collateral used to secure a loan or other obligation, when valued at fair market value as of the time the original loan or obligation was incurred, was real property;

(12) "Merchant discount" means the fee or negotiated discount charged to a merchant by the taxpayer for the privilege of participating in a program whereby a credit card is accepted in payment for merchandise or services sold to the card holder;

(13) "Participation" means an extension of credit in which an undivided ownership interest is held on a pro rata basis in a single loan or pool of loans and related collateral. In a loan participation, the credit originator initially makes the loan and then subsequently resells all or a portion of it to other lenders. The participation may or may not be known to the borrower;

(14) "Person" means an individual, estate, trust, partnership, limited liability company, corporation, and any other business entity;

(15)(A) "Principal base of operations", with respect to transportation property, means the place of more or less permanent nature from which said property is regularly directed or controlled.

(B) "Principal base of operations" means, with respect to an employee, the place of more or less permanent nature from which the employee regularly:

- (i) Starts his or her work and to which he or she customarily returns in order to receive instructions from his or her employer;

- (ii) Communicates with his or her customers or other persons; or

- (iii) Performs any other functions necessary to the exercise of his or her trade or profession at some other point or points;

(16)(A) "Real property owned" and "tangible personal property owned" mean real and tangible personal property, respectively:

- (i) On which the taxpayer may claim depreciation for federal income tax purposes, pursuant to the Internal Revenue Code, 26 U.S.C. § 1 et seq., as in effect January 1, 1995; or

(ii) Property to which the taxpayer holds legal title and on which no other person may claim depreciation for federal income tax purposes, pursuant to the Internal Revenue Code, 26 U.S.C. § 1 et seq., as in effect January 1, 1995, or could claim depreciation if subject to federal income tax, pursuant to the Internal Revenue Code, 26 U.S.C. § 1 et seq., as in effect January 1, 1995.

(B) "Real property owned" and "tangible personal property owned" do not include coin, currency, or property acquired in lieu of or pursuant to a foreclosure;

(17) "Regular place of business" means an office at which the taxpayer carries on its business in a regular and systematic manner and which is continuously maintained, occupied, and used by employees of the taxpayer;

(18) "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, or any foreign country;

(19) "Syndication" means an extension of credit in which two (2) or more persons fund and each person is at risk only up to a specified percentage of the total extension of credit or up to a specified dollar amount;

(20) "Taxable" means either:

(A) That a taxpayer is subject in another state to a net income tax, a franchise tax measured by net income, a franchise tax for the privilege of doing business, a corporate stock tax, including a bank shares tax, a single business tax, or an earned surplus tax, or any tax which is imposed upon or measured by net income; or

(B) That another state has jurisdiction to subject the taxpayer to any of such taxes regardless of whether, in fact, the state does or does not; and

(21) "Transportation property" means vehicles and vessels capable of moving under their own power such as aircraft, trains, water vessels, and motor vehicles, as well as any equipment or containers attached to such property, such as rolling stock, barges, trailers, or the like.

**History.** Acts 1995, No. 495, § 1.

**U.S. Code.** The Federal Deposit Insurance Act, referred to in this section, is primarily codified as 12 U.S.C. § 1811 et seq. The Farm Credit Act of 1933, referred

to in this section, was codified as 12 U.S.C. § 1131 et seq., but was repealed in 1966. Title 26 U.S.C. § 495 referred to in this section was repealed in 1996, by P.L. 104-188.

## 26-51-1403. Receipts factor.

(a) **GENERALLY.**

(1)(A) The receipts factor is a fraction, the numerator of which is the receipts of the taxpayer in this state during the taxable year and the denominator of which is the receipts of the taxpayer within and without this state during the taxable year.

(B) The method of calculating receipts for purposes of the denominator is the same as the method used in determining receipts for purposes of the numerator.



(2) The receipts factor shall include only those receipts described herein which constitute business income and are included in the computation of the apportionable income base for the taxable year.

(b) RECEIPTS FROM THE LEASE OF REAL PROPERTY. The numerator of the receipts factor includes:

(1) Receipts from the lease or rental of real property owned by the taxpayer if the property is located within this state; or

(2) Receipts from the sublease of real property if the property is located within this state.

(c) RECEIPTS FROM THE LEASE OF TANGIBLE PERSONAL PROPERTY.

(1) Except as described in subdivision (c)(2) of this section, the numerator of the receipts factor includes receipts from the lease or rental of tangible personal property owned by the taxpayer if the property is located within this state when it is first placed in service by the lessee.

(2)(A) Receipts from the lease or rental of transportation property owned by the taxpayer are included in the numerator of the receipts factor to the extent that the property is used in this state.

(B) The extent an aircraft will be deemed to be used in this state and the amount of receipts that is to be included in the numerator of this state's receipts factor is determined by multiplying all the receipts from the lease or rental of the aircraft by a fraction, the numerator of which is the number of landings of the aircraft in this state and the denominator of which is the total number of landings of the aircraft.

(C) If the extent of the use of any transportation property within this state cannot be determined, then the property will be deemed to be used wholly in the state in which the property has its principal base of operations.

(D) A motor vehicle will be deemed to be used wholly in the state in which it is registered.

(d) INTEREST FROM LOANS SECURED BY REAL PROPERTY.

(1)(A) The numerator of the receipts factor includes interest and fees or penalties in the nature of interest from loans secured by real property if the property is located within this state.

(B) If the property is located both within this state and one (1) or more other states, the receipts described in this subsection are included in the numerator of the receipts factor if more than fifty percent (50%) of the fair market value of the real property is located within this state.

(C) If more than fifty percent (50%) of the fair market value of the real property is not located within any (1) one state, then the receipts described in this subsection shall be included in the numerator of the receipts factor if the borrower is located in this state.

(2) The determination of whether the real property securing a loan is located within this state shall be made as of the time the original agreement was made, and any and all subsequent substitutions of collateral shall be disregarded.

(e) **INTEREST FROM LOANS NOT SECURED BY REAL PROPERTY.** The numerator of the receipts factor includes interest and fees or penalties in the nature of interest from loans not secured by real property if the borrower is located in this state.

(f) **NET GAINS FROM THE SALE OF LOANS.**

(1) The numerator of the receipts factor includes net gains from the sale of loans. Net gains from the sale of loans includes income recorded under the coupon stripping rules of 26 U.S.C. § 1286, as in effect January 1, 1995.

(2) The amount of net gains, but not less than zero (0), from the sale of loans secured by real property included in the numerator is determined by multiplying such net gains by a fraction, the numerator of which is the amount included in the numerator of the receipts factor pursuant to subsection (d) of this section and the denominator of which is the total amount of interest and fees or penalties in the nature of interest from loans secured by real property.

(3) The amount of net gains, but not less than zero (0), from the sale of loans not secured by real property included in the numerator is determined by multiplying such net gains by a fraction, the numerator of which is the amount included in the numerator of the receipts factor pursuant to subsection (e) of this section and the denominator of which is the total amount of interest and fees or penalties in the nature of interest from loans not secured by real property.

(g) **RECEIPTS FROM CREDIT CARD RECEIVABLES.** The numerator of the receipts factor includes interest and fees or penalties in the nature of interest from credit card receivables and receipts from fees charged to cardholders, such as annual fees, if the billing address of the cardholder is in this state.

(h) **NET GAINS FROM THE SALE OF CREDIT CARD RECEIVABLES.** The numerator of the receipts factor includes net gains, but not less than zero (0), from the sale of credit card receivables multiplied by a fraction, the numerator of which is the amount included in the numerator of the receipts factor pursuant to subsection (g) of this section and the denominator of which is the taxpayer's total amount of interest and fees or penalties in the nature of interest from credit card receivables and fees charged to card holders.

(i) **CREDIT CARD ISSUER'S REIMBURSEMENT FEES.** The numerator of the receipts factor includes all credit card issuer's reimbursement fees multiplied by a fraction, the numerator of which is the amount included in the numerator of the receipts factor pursuant to subsection (g) of this section and the denominator of which is the taxpayer's total amount of interest and fees or penalties in the nature of interest from credit card receivables and fees charged to cardholders.

(j) **RECEIPTS FROM MERCHANT DISCOUNT.** The numerator of the receipts factor includes receipts from merchant discount if the commercial domicile of the merchant is in this state. Such receipts shall be computed net of any card holder charge backs, but shall not be reduced by any interchange transaction fees or by any issuer's reimbursement fees paid to another for charges made by its cardholders.

(k) LOAN SERVICING FEES.

(1)(A) The numerator of the receipts factor includes loan servicing fees derived from loans secured by real property multiplied by a fraction, the numerator of which is the amount included in the numerator of the receipts factor pursuant to subsection (d) of this section and the denominator of which is the total amount of interest and fees or penalties in the nature of interest from loans secured by real property.

(B) The numerator of the receipts factor includes loan servicing fees derived from loans not secured by real property multiplied by a fraction, the numerator of which is the amount included in the numerator of the receipts factor pursuant to subsection (e) of this section and the denominator of which is the total amount of interest and fees or penalties in the nature of interest from loans not secured by real property.

(2) In circumstances in which the taxpayer receives loan servicing fees for servicing either the secured or the unsecured loans of another, the numerator of the receipts factor shall include such fees if the borrower is located in this state.

(l) RECEIPTS FROM SERVICES.

(A) The numerator of the receipts factor includes receipts from services not otherwise apportioned under this section if the service is performed in this state.

(B) If the service is performed both within and without this state, the numerator of the receipts factor includes receipts from services not otherwise apportioned under this section, if a greater proportion of the income-producing activity is performed in this state based on cost of performance.

(m) RECEIPTS FROM INVESTMENT ASSETS AND ACTIVITIES AND TRADING ASSETS AND ACTIVITIES.

(1)(A) Interest, dividends, net gains, but not less than zero (0), and other income from investment assets and activities and from trading assets and activities shall be included in the receipts factor.

(B) Investment assets and activities and trading assets and activities include, but are not limited to:

- (i) Investment securities;
- (ii) Trading account assets;
- (iii) Federal funds;
- (iv) Securities purchased and sold under agreements to resell or repurchase;
- (v) Options;
- (vi) Futures contracts;
- (vii) Forward contracts;
- (viii) Notional principal contracts such as swaps;
- (ix) Equities; and
- (x) Foreign currency transactions.

(C) With respect to the investment and trading assets and activities described in subdivisions (m)(1)(D) and (E) of this section, the



receipts factor shall include the amounts described in subdivisions (m)(1)(D) and (E) of this section.

(D) The receipts factor shall include the amount by which interest from federal funds sold and securities purchased under resale agreements exceeds interest expense on federal funds purchased and securities sold under repurchase agreements.

(E) The receipts factor shall include the amount by which interest, dividends, gains and other income from trading assets and activities, including, but not limited to, assets and activities in the matched book, in the arbitrage book, and foreign currency transactions, exceed amounts paid in lieu of interest, amounts paid in lieu of dividends, and losses from such assets and activities.

(2)(A) The numerator of the receipts factor includes interest, dividends, net gains, but not less than zero (0), and other income from investment assets and activities and from trading assets and activities described in subdivision (m)(1) of this section that are attributable to this state.

(B) The amount of interest, dividends, net gains, but not less than zero (0), and other income from investment assets and activities in the investment account to be attributed to this state and included in the numerator is determined by multiplying all such income from such assets and activities by a fraction, the numerator of which is the average value of such assets which are properly assigned to a regular place of business of the taxpayer within this state and the denominator of which is the average value of all such assets.

(C) The amount of interest from federal funds sold and purchased and from securities purchased under resale agreements and securities sold under repurchase agreements attributable to this state and included in the numerator is determined by multiplying the amount described in subdivision (m)(1)(D) of this section from such funds and such securities by a fraction, the numerator of which is the average value of federal funds sold and securities purchased under agreements to resell which are properly assigned to a regular place of business of the taxpayer within this state and the denominator of which is the average value of all such funds and such securities.

(D) The amount of interest, dividends, gains, and other income from trading assets and activities, including, but not limited to, assets and activities in the matched book, in the arbitrage book and in foreign currency transactions, but excluding amounts described in subdivision (m)(2)(B) or (m)(2)(C) of this section, attributable to this state and included in the numerator is determined by multiplying the amount described in subdivision (m)(1)(E) of this section by a fraction, the numerator of which is the average value of such trading assets which are properly assigned to a regular place of business of the taxpayer within this state and the denominator of which is the average value of all such assets.

(E) For purposes of this subdivision (m)(2), average value shall be determined using the rules for determining the average value of tangible personal property set forth in § 26-51-1404(c) and (d).

(3)(A) In lieu of using the method set forth in subdivision (m)(2) of this section, the taxpayer may elect, or the Director of the Department of Finance and Administration may require in order to fairly represent the business activity of the taxpayer in this state, the use of the method set forth in this subdivision (m)(3).

(B) The amount of interest, dividends, net gains, but not less than zero (0), and other income from investment assets and activities in the investment account to be attributed to this state and included in the numerator is determined by multiplying all such income from such assets and activities by a fraction, the numerator of which is the gross income from such assets and activities which are properly assigned to a regular place of business of the taxpayer within this state and the denominator of which is the gross income from all such assets and activities.

(C) The amount of interest from federal funds sold and purchased and from securities purchased under resale agreements and securities sold under repurchase agreements attributable to this state and included in the numerator is determined by multiplying the amount described in subdivision (m)(1)(D) of this section from such funds and such securities by a fraction, the numerator of which is the gross income from such funds and such securities which are properly assigned to a regular place of business of the taxpayer within this state and the denominator of which is the gross income from all such funds and such securities.

(D) The amount of interest, dividends, gains, and other income from trading assets and activities, including, but not limited to, assets and activities in the matched book, in the arbitrage book and in foreign currency transactions, but excluding amounts described in subdivision (m)(3)(B) or (m)(3)(C) of this section, attributable to this state and included in the numerator is determined by multiplying the amount described in subdivision (m)(1)(E) of this section by a fraction, the numerator of which is the gross income from such trading assets and activities which are properly assigned to a regular place of business of the taxpayer within this state and the denominator of which is the gross income from all such assets and activities.

(4) If the taxpayer elects or is required by the Director of the Department of Finance and Administration to use the method set forth in subdivision (m)(3) of this section, it shall use this method on all subsequent returns unless the taxpayer receives prior permission from the director to use, or the director requires, a different method.

(5) The taxpayer shall have the burden of proving that an investment asset or activity or trading asset or activity was properly assigned to a regular place of business outside of this state by demonstrating that the day-to-day decisions regarding the asset or activity occurred at a regular place of business outside this state. Where the day-to-day decisions regarding an investment asset or activity or trading asset or activity occur at more than one (1) regular place of business and one (1) such regular place of business is in this state and one (1) such regular

place of business is outside this state, such asset or activity shall be considered to be located at the regular place of business of the taxpayer where the investment or trading policies or guidelines with respect to the asset or activity are established. Unless the taxpayer demonstrates to the contrary, such policies and guidelines shall be presumed to be established at the commercial domicile of the taxpayer.

(n) **ALL OTHER RECEIPTS.** The numerator of the receipts factor includes all other receipts pursuant to the rules set forth in §§ 26-51-715 — 26-51-717.

(o) **ATTRIBUTION OF CERTAIN RECEIPTS TO COMMERCIAL DOMICILE.** All receipts which would be assigned under this section to a state in which the taxpayer is not taxable shall be included in the numerator of the receipts factor, if the taxpayer's commercial domicile is in this state.

**History.** Acts 1995, No. 495, § 1.

### **26-51-1404. Property factor.**

(a) **GENERALLY.** The property factor is a fraction, the numerator of which is the average value of real property and tangible personal property rented to the taxpayer that is located or used within this state during the taxable year, the average value of the taxpayer's real and tangible personal property owned that is located or used within this state during the taxable year, and the average value of the taxpayer's loans and credit card receivables that are located within this state during the taxable year; and the denominator of which is the average value of all such property located or used within and without this state during the taxable year.

(b) **PROPERTY INCLUDED.** The property factor shall include only property the income or expenses of which are included, or would have been included if not fully depreciated or expensed, or depreciated or expensed to a nominal amount, in the computation of the apportionable income base for the taxable year.

(c) **VALUE OF PROPERTY OWNED BY THE TAXPAYER.**

(1) The value of real property and tangible personal property owned by the taxpayer is the original cost or other basis of such property for federal income tax purposes without regard to depletion, depreciation, or amortization.

(2) Loans are valued at their outstanding principal balance, without regard to any reserve for bad debts. If a loan is charged off, in whole or in part, for federal income tax purposes, the portion of the loan charged off is not outstanding. A specifically allocated reserve established pursuant to regulatory or financial accounting guidelines which is treated as charged off for federal income tax purposes shall be treated as charged off for purposes of this section.

(3) Credit card receivables are valued at their outstanding principal balance, without regard to any reserve for bad debts. If a credit card receivable is charged off, in whole or in part, for federal income tax purposes, the portion of the receivable charged off is not outstanding.



(d) AVERAGE VALUE OF PROPERTY OWNED BY THE TAXPAYER.

(1) The average value of property owned by the taxpayer is computed on an annual basis by adding the value of the property on the first day of the taxable year and the value on the last day of the taxable year and dividing the sum by two (2).

(2) If averaging on this basis does not properly reflect average value, the Director of the Department of Finance and Administration may require averaging on a more frequent basis.

(3) The taxpayer may elect to average on a more frequent basis.

(4) When averaging on a more frequent basis is required by the Director of the Department of Finance and Administration or is elected by the taxpayer, the same method of valuation must be used consistently by the taxpayer with respect to property within and without this state and on all subsequent returns unless the taxpayer receives prior permission from the director or the director requires a different method of determining average value.

(e) AVERAGE VALUE OF REAL PROPERTY AND TANGIBLE PERSONAL PROPERTY RENTED TO THE TAXPAYER.

(1) The average value of real property and tangible personal property that the taxpayer has rented from another, and which is not treated as property owned by the taxpayer for federal income tax purposes, shall be determined annually by multiplying the gross rents payable during the taxable year by eight (8).

(2)(A) Where the use of the general method described in this subsection results in inaccurate valuations of rented property, any other method which properly reflects the value may be adopted by the director or by the taxpayer when approved in writing by the director.

(B) Once approved, such other method of valuation must be used on all subsequent returns unless the taxpayer receives prior approval from the director or unless the director requires a different method of valuation.

(f) LOCATION OF REAL PROPERTY AND TANGIBLE PERSONAL PROPERTY OWNED BY OR RENTED TO THE TAXPAYER.

(1) Except as described in subdivision (f)(2) of this section, real property and tangible personal property owned by or rented to the taxpayer is considered to be located within this state if it is physically located, situated, or used within this state.

(2)(A) Transportation property is included in the numerator of the property factor to the extent that the property is used in this state.

(B) The extent an aircraft will be deemed to be used in this state and the amount of value that is to be included in the numerator of this state's property factor is determined by multiplying the average value of the aircraft by a fraction, the numerator of which is the number of landings of the aircraft in this state and the denominator of which is the total number of landings of the aircraft everywhere.

(C) If the extent of the use of any transportation property within this state cannot be determined, then the property will be deemed to be used wholly in the state in which the property has its principal base of operations.

(D) A motor vehicle will be deemed to be used wholly in the state in which it is registered.

(g) LOCATION OF LOANS.

(1)(A) A loan is considered to be located within this state if it is properly assigned to a regular place of business of the taxpayer within this state.

(B) A loan is properly assigned to the regular place of business with which it has a preponderance of substantive contacts.

(2)(A) A loan assigned by the taxpayer to a regular place of business without the state shall be presumed to have been properly assigned if:

(i) The taxpayer has assigned, in the regular course of its business, such loan on its records to a regular place of business consistent with federal or state regulatory requirements;

(ii) Such assignment on its records is based upon substantive contacts of the loan to such regular place of business; and

(iii) The taxpayer uses said records reflecting assignment of loans for the filing of all state and local tax returns for which an assignment of loans to a regular place of business is required.

(B) The presumption of proper assignment of a loan provided in subdivisions (g)(1)(B) and (g)(2)(A) of this section may be rebutted upon a showing by the director, supported by a preponderance of the evidence, that the preponderance of substantive contacts regarding such loan did not occur at the regular place of business to which it was assigned on the taxpayer's records.

(C) When such presumption has been rebutted, the loan shall then be located within this state if:

(i) The taxpayer had a regular place of business within this state at the time the loan was made; and

(ii) The taxpayer fails to show, by a preponderance of the evidence, that the preponderance of substantive contacts regarding such loan did not occur within this state.

(3) In the case of a loan which is assigned by the taxpayer to a place without this state which is not a regular place of business, it shall be presumed, subject to rebuttal by the taxpayer on a showing supported by the preponderance of evidence, that the preponderance of substantive contacts regarding the loan occurred within this state, if, at the time the loan was made, the taxpayer's commercial domicile, as defined by § 26-51-1402(3), was within this state.

(4)(A) To determine the state in which the preponderance of substantive contacts relating to a loan have occurred, the facts and circumstances regarding the loan at issue shall be reviewed on a case-by-case basis, and consideration shall be given to such activities as the solicitation, investigation, negotiation, approval, and administration of the loan.

(B) The terms "solicitation", "investigation", "negotiation", "approval", and "administration" are defined as follows:

(i)(a) "Solicitation" is either active or passive.

(b) Active solicitation occurs when an employee of the taxpayer initiates the contact with the customer. Such activity is located at the regular place of business which the taxpayer's employee is regularly connected with or working out of, regardless of where the services of such employee were actually performed.

(c) Passive solicitation occurs when the customer initiates the contact with the taxpayer. If the customer's initial contact was not at a regular place of business of the taxpayer, the regular place of business, if any, where the passive solicitation occurred is determined by the facts in each case;

(ii) "Investigation" is the procedure whereby employees of the taxpayer determine the credit-worthiness of the customer, as well as the degree of risk involved in making a particular agreement. Such activity is located at the regular place of business which the taxpayer's employees are regularly connected with or working out of, regardless of where the services of such employees were actually performed;

(iii) "Negotiation" is the procedure whereby employees of the taxpayer and its customer determine the terms of the agreement, for example, the amount, duration, interest rate, frequency of repayment, currency denomination, and security required. Such activity is located at the regular place of business which the taxpayer's employees are regularly connected with or working out of, regardless of where the services of such employees were actually performed;

(iv) "Approval" is the procedure whereby employees or the board of directors of the taxpayer make the final determination whether to enter into the agreement. Such activity is located at the regular place of business which the taxpayer's employees are regularly connected with or working out of, regardless of where the services of such employees were actually performed. If the board of directors makes the final determination, such activity is located at the commercial domicile of the taxpayer; and

(v) "Administration" is the process of managing the account. This process includes bookkeeping, collecting the payments, corresponding with the customer, reporting to management regarding the status of the agreement, and proceeding against the borrower or the security interest if the borrower is in default. Such activity is located at the regular place of business which oversees this activity.

(h) LOCATION OF CREDIT CARD RECEIVABLES. For purposes of determining the location of credit card receivables, credit card receivables shall be treated as loans and shall be subject to the provisions of subsection (g) of this section.

(i) PERIOD FOR WHICH PROPERLY ASSIGNED LOAN REMAINS ASSIGNED. A loan that has been properly assigned to a state shall, absent any change of material fact, remain assigned to said state for the length of the original term of the loan. Thereafter, said loan may be properly assigned to another state if said loan has a preponderance of substantive contact to a regular place of business there.



**History.** Acts 1995, No. 495, § 1.

### **26-51-1405. Payroll factor.**

(a) **GENERALLY.** The payroll factor is a fraction, the numerator of which is the total amount paid in this state during the taxable year by the taxpayer for compensation and the denominator of which is the total compensation paid both within and without this state during the taxable year. The payroll factor shall include only that compensation which is included in the computation of the apportionable income tax base for the taxable year.

(b) **COMPENSATION RELATING TO NONBUSINESS INCOME AND INDEPENDENT CONTRACTORS.** The compensation of any employee for services or activities which are connected with the production of nonbusiness income, which is income that is not includable in the apportionable income base, and payments made to any independent contractor or any other person not properly classifiable as an employee shall be excluded from both the numerator and denominator of the factor.

(c) **WHEN COMPENSATION PAID IN THIS STATE.** Compensation is paid in this state if any one (1) of the following tests, applied consecutively, is met:

(1) The employee's services are performed entirely within this state;

(2) The employee's services are performed both within and without the state, but the service performed without the state is incidental to the employee's service within the state. "Incidental" means any service which is temporary or transitory in nature, or which is rendered in connection with an isolated transaction; and

(3) If the employee's services are performed both within and without this state, the employee's compensation will be attributed to this state:

(A) If the employee's principal base of operations is within this state;

(B) If there is no principal base of operations in any state in which some part of the services are performed, but the place from which the services are directed or controlled is in this state; or

(C) If the principal base of operations and the place from which the services are directed or controlled are not in any state in which some part of the service is performed but the employee's residence is in this state.

**History.** Acts 1995, No. 495, § 1.

## **SUBCHAPTER 15 — ARKANSAS PRIVATE WETLAND AND RIPARIAN ZONE CREATION, RESTORATION, AND CONSERVATION TAX CREDITS ACT**

### **SECTION.**

26-51-1501. Title.

26-51-1502. Legislative findings.

26-51-1503. Definitions.

26-51-1504. Applicability.

26-51-1505. Credits granted.

26-51-1506. Administration.

### **SECTION.**

26-51-1507. Application and approval procedure.

26-51-1508. Development, operation, and tax credits.

26-51-1509. Recordkeeping requirement.

26-51-1510. Annual compilation of cred-

its — Expiration of subchapter — Tax credit availability.

**Effective Dates.** Acts 1995, No. 561, § 4(a): the tax credits provided by this subchapter shall apply to taxable years beginning on or after January 1, 1996, and all taxable years thereafter.

Acts 2009, No. 351, § 11: July 31, 2009. Effective date clause provided: "This act is effective for tax years beginning on or after January 1, 2009."

## 26-51-1501. Title.

This subchapter may be cited as the "Arkansas Private Wetland and Riparian Zone Creation, Restoration, and Conservation Tax Credits Act".

**History.** Acts 1995, No. 561, § 1; 2009, No. 351, § 1.

**Amendments.** The 2009 amendment substituted "Creation, Restoration, and

Conservation Tax Credits" for "Creation and Restoration Incentives," and made related changes.

## 26-51-1502. Legislative findings.

(a) Wetlands and riparian zones have significant benefits to the state. They include:

- (1) Flood impact mitigation by slowing storm water runoff;
- (2) Water quality enhancement by removing sediment, nitrogen, phosphorus, and other pollutants from surface water;
- (3) Habitats for fish and wildlife, including waterfowl and rare or endangered species;
- (4) Groundwater recharge can occur in wetlands that will assist in ensuring that groundwater is available for the future;
- (5) Recreational uses for hunting, fishing, hiking, et cetera, that not only add to the quality of life, but also have a significant economic impact on the state; and
- (6) Timber and food production in properly managed wetlands can provide wood products, plants, and animals for human and livestock consumption.

(b) Arkansas has lost over seventy percent (70%) of its pre-European settlement wetlands. Even though the rate of wetland loss in the United States has declined in recent years, wetlands in Arkansas continue to experience significant loss.

(c) The majority of lands suitable for wetlands and riparian zones are held by private owners. The state should encourage these owners to restore and enhance existing wetlands and riparian zones and, when possible, create new wetlands and riparian zones.

(d) The donation of wetland and riparian zone qualified real property interests should be encouraged by the state so that permanent protection of the conservation values of these lands is ensured.

**History.** Acts 1995, No. 561, § 2; 2009, No. 351, § 2.

**Amendments.** The 2009 amendment added (d).

### **26-51-1503. Definitions.**

As used in this subchapter:

(1) “Application” means a written plan for development and operation of the project, including all requirements the Arkansas Natural Resources Commission may adopt by rule;

(2) “Commission” means the Arkansas Natural Resources Commission;

(3) “Committee” means the Private Wetland and Riparian Zone Creation, Restoration, and Conservation Committee, which is a committee made up of:

(A) The directors or their designees of:

(i) The Arkansas Forestry Commission;

(ii) The Arkansas State Game and Fish Commission;

(iii) The Department of Finance and Administration;

(iv) The Department of Arkansas Heritage; and

(v) The Arkansas Department of Environmental Quality; and

(B)(i) Two (2) public members with expertise in wetlands and riparian zone ecology appointed by the Arkansas Natural Resources Commission.

(ii) In appointing public members, the Arkansas Natural Resources Commission should consider the wide variety of interests in wetlands and riparian zones;

(4) “Division” means the Revenue Division of the Department of Finance and Administration;

(5)(A) “Eligible donee” means a qualified organization under 26 U.S.C. § 170(h)(3), as in effect on January 1, 2009, and corresponding regulations in 26 C.F.R. § 1.170A-14(c), as in effect on January 1, 2009.

(B) A non-governmental qualified organization must have adopted the Land Trust Alliance Land Trust Standards and Practices, as in effect on January 1, 2009, in order to qualify as an “eligible donee”;

(6) “Eligible donor” means any person or entity that owns a qualified real property interest, including without limitation an individual, corporation, trust, estate, and partnership or other pass-through legal entity;

(7) “Project” means wetlands or riparian zones created or restored by activities for which tax credits are claimed;

(8) “Project cost” means the actual expenditure for a project, less any reimbursement received by the taxpayer from cost-share programs;

(9) “Qualified appraisal” means an appraisal in accordance with 26 C.F.R. § 1.170A-13(c)(3), as in effect on January 1, 2009, and the



Uniform Standards of Professional Appraisal Practice, as in effect on January 1, 2009;

(10) “Qualified conservation purpose” means a conservation purpose as defined by 26 U.S.C. § 170(h)(4), as in effect on January 1, 2009, and corresponding regulations in 26 C.F.R. § 1.170A-14(d), as in effect on January 1, 2009;

(11) “Qualified real property interest” means an interest in real property located completely in this state and containing wetlands or riparian zones, which also meets the definition of a qualified real property interest under 26 U.S.C. § 170(h)(2), as in effect on January 1, 2009, and the corresponding regulations in 26 C.F.R. § 1.170A-14(b), as in effect on January 1, 2009;

(12) “Riparian zone” means:

(A) An area of land along the bank of a natural watercourse or contiguous to a body of water that is set aside to reduce impacts of adjoining land use on the stream or water body; or

(B) Any other definition promulgated by the Arkansas Natural Resources Commission; and

(13) “Wetlands” means:

(A) An area that:

(i) Has water at or near the surface of the ground at some time during the growing season, wetland hydrology;

(ii) Contains plants that are adapted to wet habitats, hydrophytic vegetation; and

(iii) Is made up of soils that have developed under wet conditions, hydric soils; or

(B) Any other definition promulgated by the Arkansas Natural Resources Commission.

**History.** Acts 1995, No. 561, § 3; 1999, No. 1164, § 189; 2009, No. 351, §§ 3, 4.

**Amendments.** The 2009 amendment, in present (3), rewrote the introductory language, which read: “Private Lands Restoration Committee is a committee

made up of,” inserted “and riparian zones” in (3)(B)(ii), and made related changes; added (5), (6), and (10) through (12); and redesignated the remaining subdivisions accordingly.

## **26-51-1504. Applicability.**

(a) There are two (2) types of tax credits available under this subchapter:

(1) Wetland and riparian zone creation and restoration tax credits, which shall apply to taxable years beginning on or after January 1, 1996, and all taxable years thereafter; and

(2) Wetland and riparian zone conservation tax credits, which shall apply to taxable years beginning on or after January 1, 2009, and all taxable years thereafter.

(b)(1) Any taxpayer claiming a tax credit under this subchapter may not claim a credit under the Water Resource Conservation and Development Incentives Act of 1985, § 26-51-1001 et seq., or any similar act for any costs related to the same project.

(2) Any taxpayer claiming a tax credit under this subchapter may not claim a tax credit under any other act for any costs related to the same project.

(c) Any tax credits issued to partnerships, limited liability companies, Subchapter S corporations, or fiduciaries may pass through to their members, managers, partners, shareholders, and/or beneficiaries.

**History.** Acts 1995, No. 561, §§ 4, 7; 2009, No. 351, § 5.

**Cross References.** Federal Subchapter S adopted, § 26-51-409.

**Amendments.** The 2009 amendment rewrote (a).

### **26-51-1505. Credits granted.**

(a) There shall be allowed a wetland and riparian zone creation and restoration tax credit against the tax imposed by the Income Tax Act of 1929, § 26-51-101 et seq., in an amount as determined in subsection (c) of this section for any taxpayer engaged in the creation or restoration of wetlands and riparian zones.

(b) There shall be allowed a wetland and riparian zone conservation tax credit against the tax imposed by the Income Tax Act of 1929, § 26-51-101 et seq., in an amount as determined in subsection (c) of this section for any eligible donor who donates a qualified real property interest for a qualified conservation purpose to an eligible donee.

(c)(1) The amount of the wetland and riparian zone creation and restoration tax credit allowed under subsection (a) of this section shall be equal to the project cost incurred in the creation or restoration of wetlands and riparian zones and shall not exceed fifty thousand dollars (\$50,000).

(2) The amount of the wetland and riparian zone conservation tax credit allowed under subsection (b) of this section shall equal fifty percent (50%) of the fair market value of the qualified real property interest donation calculated to exclude any short term capital gain under 26 U.S.C. § 170(e)(1)(A), as in effect on January 1, 2009, and shall not exceed fifty thousand dollars (\$50,000).

(3)(A) The amount of the tax credit under this subchapter that may be used by a taxpayer for a taxable year may not exceed the lesser of:

(i) The amount of individual or corporate income tax otherwise due; or

(ii) Five thousand dollars (\$5,000).

(B) Any unused tax credit under this subchapter may be carried over for a maximum of nine (9) consecutive taxable years following the taxable year in which the tax credit originated.

(C) Any unused tax credit under this subchapter shall survive the death of an individual taxpayer and may be used by the individual taxpayer's estate, subject to the limitations in this subdivision (c)(3).

(4) Tax credits under this subchapter may only be used by the taxpayer certified to earn a tax credit to offset the taxpayer's state income tax liability and are nontransferable.

(5)(A) Only one (1) wetland and riparian zone conservation tax credit may be earned per qualified real property interest donation.

(B) If the qualified real property interest is held in common ownership, the wetland and riparian zone conservation tax credit shall be allocated in proportion to each respective ownership share.

(C) If the qualified real property interest is held by a pass-through entity, the wetland and riparian zone conservation tax credit shall be allocated as prescribed under 26 U.S.C. § 704(b), as in effect on January 1, 2009, and corresponding regulations in 26 C.F.R. § 1.704-1(b)(4)(ii), as in effect on January 1, 2009.

(6) An eligible donor may earn only one (1) wetland and riparian zone conservation tax credit per income tax year.

(d) To claim the benefits of this section, a taxpayer must obtain a certification from the Arkansas Natural Resources Commission certifying to the Revenue Division of the Department of Finance and Administration that the taxpayer has met all the requirements and qualifications set forth in §§ 26-51-1504(b)(2) and 26-51-1507(a) for a wetland and riparian zone creation and restoration tax credit or § 26-51-1507(b) for a wetland and riparian zone conservation tax credit.

(e) The division shall promulgate such rules and regulations as may be deemed necessary to carry out the tax credit provisions of this subchapter.

**History.** Acts 1995, No. 561, § 6; 2009, No. 351, § 6.

**Amendments.** The 2009 amendment inserted (b), (c)(2), (c)(3)(C), and (c)(4) through (c)(6) and redesignated the remaining subdivisions accordingly; inserted "wetland and riparian zone creation and restoration tax" in (a) and (c)(1); substituted "creation" for "development"

in (a) and (c)(1); substituted "subsection (c)" for "subsection (b)" in (a); inserted "and shall not exceed fifty thousand dollars (\$50,000)" in (c)(1); inserted "(a) for a wetland and riparian zone creation and restoration tax credit or § 26-51-1507(b) for a wetland and riparian zone conservation tax credit" in (d); and made minor stylistic changes.

## **26-51-1506. Administration.**

(a)(1) The Arkansas Natural Resources Commission is charged with the responsibility of promulgating and administering rules related to the creation, restoration, and conservation of wetlands and riparian zones with the intent of qualifying for the tax credits provided for in this subchapter.

(2) Prior to adoption of any rules under this subchapter, the commission shall obtain comments on the proposed rules from the Private Wetland and Riparian Zone Creation, Restoration, and Conservation Committee.

(b)(1) The commission may charge a reasonable application fee for the processing of tax credit applications.

(2) All fees collected shall be deposited into the Arkansas Water Development Fund.



**History.** Acts 1995, No. 561, § 5; 2009, No. 351, § 7.

**Amendments.** The 2009 amendment, in (a), inserted “and conservation” and substituted “credits” for “incentives” in (a)(1), substituted “from the committee”

for “of the Private Lands Restoration Committee” in (a)(2), and made related changes.

**Cross References.** Arkansas Water Development Fund, § 15-22-507.

## **26-51-1507. Application and approval procedure.**

(a)(1)(A) WETLAND AND RIPARIAN ZONE CREATION AND RESTORATION TAX CREDIT.

(B) A taxpayer wishing to obtain a wetland and riparian zone creation and restoration tax credit shall submit an application to the Arkansas Natural Resources Commission.

(C) Upon receipt of the application, the commission shall make the application available to the Private Wetland and Riparian Zone Creation, Restoration, and Conservation Committee for its review and comment.

(D) After review of the committee comments, the commission may issue a wetland and riparian zone creation and restoration tax credit approval certificate for those applications proposing projects that meet the requirements of this subchapter and rules promulgated thereunder.

(2)(A) Project costs incurred after issuance of a wetland and riparian zone creation and restoration tax credit approval certificate may be claimed for a wetland and riparian zone creation and restoration tax credit, subject to the limitations in § 26-51-1505.

(B) A taxpayer must file the certificate of wetland and riparian zone creation and restoration tax credit approval with the taxpayer's income tax return for the first year in which the taxpayer claims a tax credit under this subchapter.

(3)(A) Upon completion and proper functioning of the project, the commission shall issue a certificate of completion.

(B) A taxpayer must file the certificate of completion with the first tax return filed after issuance of the certificate of completion.

(b)(1)(A) WETLAND AND RIPARIAN ZONE CONSERVATION TAX CREDIT.

(B) An eligible donor wishing to obtain a wetland and riparian zone conservation tax credit shall submit an application to the commission.

(C) Upon receipt of the application, the commission shall make the application available to the committee for its review and comment. The committee's review shall include the following considerations:

(i) Whether the appraisal of the qualified real property interest meets the minimum standards of the Uniform Standards of Professional Appraisal Practice and the Internal Revenue Service requirements for a qualified appraisal;

(ii) Whether the qualified real property interest's valuation does not appear to be manifestly abusive;

(iii) Whether the conservation purpose of the donation complies with the requirements of a qualified conservation purpose and

contributes to the wetland and riparian zone benefits in § 26-51-1502;

(iv) Whether the real property interest meets the requirements for a qualified real property interest; and

(v) Whether the donee of the qualified real property interest meets the requirements of an eligible donee.

(D) After review of the committee comments, the commission may issue a wetland and riparian zone conservation tax credit approval certificate for those applications that meet the requirements of this subchapter and the rules promulgated under this subchapter.

(2)(A) An eligible donor may apply for conditional approval of a wetland and riparian zone conservation tax credit before a qualified real property interest donation has been recorded.

(B) If conditional approval of a wetland and riparian zone conservation tax credit is granted, the application must be resubmitted to the commission after the qualified real property interest donation has been recorded for the limited purpose of demonstrating conformity with the originally submitted draft documents.

(3)(A) If the commission denies approval of a wetland and riparian zone conservation tax credit, it shall provide a brief written statement to the applicant of the reason for a decision to deny approval.

(B) When a problem identified by the commission is remedied, an eligible donor may resubmit the application for approval of the wetland and riparian zone conservation tax credit.

(4) A decision on an application for approval or conditional approval of a wetland and riparian zone conservation tax credit or on a resubmission of a conditionally approved or previously denied application shall be issued in the order in which the completed applications or resubmissions are received.

(5) For good cause shown, the Department of Finance and Administration may review and either accept or reject in whole or in part any wetland and riparian zone conservation tax credit claimed by a taxpayer and may require information from a taxpayer regarding the:

(A) Appraisal value of the qualified real property interest;

(B) Amount of the wetland and riparian zone conservation tax credit;

(C) Validity of the wetland and riparian zone conservation tax credit; and

(D) Other relevant matters.

**History.** Acts 1995, No. 561, §§ 7, 8; 2009, No. 351, § 8.

**Amendments.** The 2009 amendment redesignated (a) through (c) as (a); in (a); inserted the subsection headings and in-

serted "wetland and riparian zone creation and restoration" in five places; added (b); and made related and minor stylistic changes.

**26-51-1508. Development, operation, and tax credits.**

(a)(1) All projects must be completed and properly functioning within three (3) years of the date of the certificate of tax credit approval, except if the Arkansas Natural Resources Commission determines that failure to comply with this subdivision (a)(1) is the result of conditions beyond the control of the taxpayer, an additional year to comply with this subdivision (a)(1) may be granted by the commission.

(2) If the taxpayer does not complete the project within the period provided in subdivision (a)(1) of this section, all credits claimed must be repaid to the Revenue Division of the Department of Finance and Administration, and the project will be disallowed as a project for tax credit purposes.

(b)(1) Project activities shall meet or exceed those standards as established by the commission, and the project must be maintained for a minimum life of ten (10) years after it is certified as being complete.

(2)(A) If the taxpayer terminates the project prior to expiration of the minimum project life, the taxpayer shall provide written notification to the commission and the division.

(B) In addition, the taxpayer shall file an amended tax return and repay the amount of tax credit claimed which was not allowable.

(3) If the commission determines that the taxpayer has terminated the project, it shall notify the division.

(4)(A) Upon the termination of the project, the taxpayer shall not be allowed any further tax credits provided in this subchapter and the division shall recapture the pro rata share of any tax credits claimed under this subchapter for the period of termination.

(B) The pro rata share for recapture of the disallowed tax credits shall be determined by dividing the period of time from termination of the project until the expiration of the minimum life of the project by the required minimum life of the project times the tax credit claimed.

(C) Notwithstanding the provisions of § 26-18-306, the division may make necessary assessments to recapture disallowed tax credits for a period of three (3) years from the date of expiration of the minimum life of the project.

**History.** Acts 1995, No. 561, § 8.

**26-51-1509. Recordkeeping requirement.**

For purposes of this subchapter, the recordkeeping provisions of § 26-18-506 requiring a taxpayer to maintain records for six (6) years after a return is filed shall be extended to require the taxpayer claiming a wetland and riparian zone creation and restoration tax credit under this subchapter to maintain the required records for the required minimum life of the project plus three (3) years.



**History.** Acts 1995, No. 561, § 8; 2009, No. 351, § 9. inserted “wetland and riparian zone creation and restoration tax.”

**Amendments.** The 2009 amendment

**26-51-1510. Annual compilation of credits — Expiration of subchapter — Tax credit availability.**

(a) Following the end of every calendar year, the Department of Finance and Administration shall compile the cumulative total amount of tax credits used pursuant to the provisions of this subchapter.

(b)(1) The tax credits established by this subchapter and the availability of those tax credits shall expire on December 31 of the calendar year following the calendar year in which the tax credits used pursuant to the provisions of this subchapter exceed five hundred thousand dollars (\$500,000).

(2) However, any taxpayer having been issued a certificate of tax credit approval on or prior to such December 31 shall be entitled to the tax credits provided under this subchapter without regard to the fact that the availability of the tax credits has otherwise expired.

**History.** Acts 1995, No. 561, § 9; 2009, No. 351, § 10. hundred thousand dollars (\$500,000)” and inserted “and the availability of those tax credits” in (b)(1), deleted “may complete the project and” following “December 31” in (b)(2), and made related changes.

**Amendments.** The 2009 amendment rewrote (a); in (b), deleted “When the total amount of tax credits used pursuant to the provisions of this subchapter exceeds five

**SUBCHAPTER 16 — YOUTH APPRENTICESHIP/WORK-BASED LEARNING PROGRAM TAX CREDIT**

SECTION.

- 26-51-1601. Legislative findings and intent.
- 26-51-1602. Definitions.
- 26-51-1603. Credit permitted.

SECTION.

- 26-51-1604. Claiming the credit.
- 26-51-1605. Limits on amount of credit — Applicability of credit.
- 26-51-1606. Rules and regulations.

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**Cross References.** Youth apprenticeship program, § 26-51-509.

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**26-51-1601. Legislative findings and intent.**

The General Assembly finds that some of the youth apprenticeship/work-based learning programs in the state, while of high quality and standards, are not in occupations that are covered by 29 C.F.R. § 29.1 et seq., Part 29, which would allow the programs to be registered by the Office of Apprenticeship of the United States Department of Labor. Employers of youth apprentices who are in programs/occupations registered by the office are allowed to participate in a two thousand

dollar (\$2,000) tax credit as provided in § 26-51-509. It is the intent of this subchapter to provide guidelines and a process for certifying high quality youth apprentice/work-based learning programs/occupations that meet the criteria set forth by the Department of Career Education in order that they may also participate in a two thousand dollar (\$2,000) tax credit. The qualifying programs/occupations must meet the standards and program designs that are nationally recognized by business and industry and/or trade associations and have support by such groups in this state. No apprentice program may be certified as meeting the intent of the subchapter if its curriculum and standards are not nationally recognized and/or do not meet the criteria established for such programs.

**History.** Acts 1997, No. 1168, § 1.

### **26-51-1602. Definitions.**

As used in this subchapter:

- (1) "Department" means the Department of Finance and Administration;
- (2) "Division" means the Department of Career Education; and
- (3) "Youth apprentice" means an individual between the ages of sixteen (16) and twenty-one (21) who is enrolled in a public or private secondary or postsecondary school.

**History.** Acts 1997, No. 1168, § 2.

**A.C.R.C. Notes.** Subdivision (2) of this section defined the former Vocational and Technical Education Division of the Department of Education. The division was abolished and transferred to the Depart-

ment of Workforce Education by a type 3 transfer under § 25-2-106 by Acts 1997, No. 803, § 4. The Department of Workforce Education was renamed to the Department of Career Education by Acts 2009, No. 987. See § 25-30-106.

### **26-51-1603. Credit permitted.**

A taxpayer who employs a youth apprentice in an apprenticeship/work-based learning program which meets the standards of program design for nationally recognized curriculum and/or business and industry or trade association standards and which meets the criteria for vocationally approved youth apprentice/work-based learning programs and which is not in an occupation eligible for registration as provided in 29 C.F.R. § 29.1 et seq., Part 29, as in effect on January 1, 1995, shall be allowed a credit in the amount of two thousand dollars (\$2,000) or ten percent (10%) of the wages earned by the youth apprentice, whichever is less, against the tax imposed by the Income Tax Act of 1929, § 26-51-101 et seq., for each such apprentice.

**History.** Acts 1997, No. 1168, § 3.

**26-51-1604. Claiming the credit.**

To claim the benefits of this subchapter, a taxpayer must obtain certification from the Department of Career Education certifying to the Revenue Division of the Department of Finance and Administration that the taxpayer has met all the requirements and qualifications set forth in this subchapter. The certification to the Department of Finance and Administration shall include the total amount of wages paid to each youth apprentice employed by the taxpayer or 501(c)(3) corporation in the taxable year for which the taxpayer claims the credit provided in this subchapter.

**History.** Acts 1997, No. 1168, § 4.

this section is a reference to 26 U.S.C.

**A.C.R.C. Notes.** The term "501(c)(3)" in § 501(c)(3).

**26-51-1605. Limits on amount of credit — Applicability of credit.**

(a) The amount of the credit that may be used by a taxpayer for a taxable year may not exceed the amount of individual or corporate income tax otherwise due. Any unused credit may be carried over for a maximum of two (2) consecutive taxable years.

(b) If the business is an S corporation, the pass-through provisions of § 26-51-409, as in effect for the taxable year the credit is earned, shall be applicable.

(c) A partner's or member's distributive share of the credit shall be determined by the partnership or limited liability company agreement, unless the agreement does not have substantial economic effect or does not provide for the allocation of credits. If the agreement does not have substantial economic effect or does not provide for the allocation of the credit, the credit shall be allocated according to the partner's or member's interest in the partnership, pursuant to 26 U.S.C. § 704(b), as in effect on January 1, 1995.

(d) A taxpayer who trains a youth apprentice in a certified youth apprenticeship program as provided in § 26-51-1603 shall be entitled to the tax credit provided in this subchapter for such youth apprentice, even though the apprentice receives his or her wages for such training from a 501(c)(3) corporation.

(e) The tax credit provided by this subchapter shall apply to taxable years beginning January 1, 1998, and all taxable years thereafter.

**History.** Acts 1997, No. 1168, § 5.

to 26 U.S.C. § 501(c)(3).

**A.C.R.C. Notes.** The term "501(c)(3)" in subsection (d) of this section is a reference

**Cross References.** Federal Subchapter S adopted, § 26-51-409.

**26-51-1606. Rules and regulations.**

The Revenue Division of the Department of Finance and Administration shall promulgate such rules and regulations as may be deemed necessary to carry out the purposes of this subchapter. The Revenue Division of the Department of Finance and Administration shall consult



with the Department of Career Education during the promulgation of the rules and regulations.

**History.** Acts 1997, No. 1168, § 6.

SUBCHAPTER 17 — LOW INCOME HOUSING TAX CREDIT

SECTION.	SECTION.
26-51-1701. Definitions.	26-51-1704. Sale, assignment, and transfer of tax credit allowed.
26-51-1702. Allowance and calculation of tax credit.	26-51-1705. Rules and regulations.
26-51-1703. Eligibility statement.	

**Effective Dates.** Acts 2011, No. 787, § 36, provided: “Subdivision (14)(B) of Section 12, subdivision (a)(1)(B) of Section 16, Section 17, Section 20, and Section 35 shall be effective for tax years beginning on and after January 1, 2010. Sections 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, subdivision

(14)(A) of Section 12, Sections 13, 14, 15, subdivisions (a)(1)(A) and (a)(2) of Section 16, Sections 18, 19 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, and 34 shall be effective for tax years beginning on and after January 1, 2011.”

26-51-1701. Definitions.

As used in this subchapter, unless the context clearly requires otherwise:

- (1) “Authority” means the Arkansas Development Finance Authority, or its successor agency;
- (2) “Director” means the Director of the Department of Finance and Administration;
- (3) “Eligibility statement” means a statement authorized and issued by the authority certifying that a given project qualifies for the Arkansas low income housing tax credit. The authority shall promulgate rules establishing criteria upon which the eligibility statements will be issued. The eligibility statement shall specify the amount of the Arkansas low income housing tax credit allowed;
- (4) “Federal low income housing tax credit” means the federal tax credit as provided in 26 U.S.C. § 42, as amended;
- (5) “Qualified project” means a qualified low income building as that term is defined in 26 U.S.C. § 42, as amended, which is located in Arkansas; and
- (6) “Taxpayer” means a person, firm or corporation subject to the state income tax imposed by provisions of §§ 26-51-101 — 26-51-1510, or an insurance company paying an annual tax on its gross premium receipts in this state, or a financial institution paying income taxes to the State of Arkansas.

**History.** Acts 1997, No. 1332, § 1.

**26-51-1702. Allowance and calculation of tax credit.**

(a) A taxpayer owning an interest in a qualified project shall be allowed a state tax credit, to be termed the Arkansas low income housing tax credit, if the Arkansas Development Finance Authority issues an eligibility statement for that project. For any taxpayer which is, for state income tax purposes, taxed as a partnership or an S corporation, the tax credits allocated to the taxpayer shall be allocated to each partner, member or shareholder of the taxpayer in accordance with the provisions of the articles of incorporation, bylaws, partnership agreement, operating agreement or other agreement setting forth such allocation.

(b) The Arkansas low income housing tax credit available to a qualified project shall be calculated by multiplying an amount equal to the federal low income housing tax credit for a qualified project for a federal tax period, by twenty percent (20%) and such amount shall be subtracted from the amount of state income or premium tax otherwise due from the taxpayer for the same tax period.

(c) The Arkansas low income housing tax credit shall be taken against the state income or premium taxes due from the taxpayer. The credit authorized by this subchapter shall not be refundable. Any amount of credit that exceeds the tax due for a taxable year may be carried forward to any of the five (5) subsequent taxable years or carried forward to any of the five (5) subsequent taxable years.

(d) All or any portion of the Arkansas low income housing tax credits may be allocated to parties who are eligible under the provisions of subsection (a) of this section. An owner of a qualified project shall certify to the Director of the Department of Finance and Administration the amount of the Arkansas low income housing tax credit allocated to each taxpayer.

(e) In the event that recapture of Arkansas low income housing tax credits is required pursuant to § 26-51-1703(b) of this subchapter, any statement submitted to the director as provided in this section shall include the proportion of the Arkansas low income housing tax credit required to be recaptured, the identity of each taxpayer subject to the recapture and the amount of Arkansas low income housing tax credit previously allocated to such taxpayer.

(f) The total amount of tax credit granted under this subchapter shall not exceed two hundred fifty thousand dollars (\$250,000) in any taxable year.

(g)(1) A grant payment made under § 1602 of the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5, is excluded from gross income if the grant payment is made in lieu of a federal low income housing tax credit.

(2) The grant recipient shall comply with the requirements of this subchapter in the same manner as if the grant recipient had received a federal low income housing tax credit.

**History.** Acts 1997, No. 1332, § 2; 2011, No. 787, § 35.

**U.S. Code.** Section 1602 of the ARRA of 2009 is codified as 26 USCS § 42.

**Amendments.** The 2011 amendment added (g).

### **26-51-1703. Eligibility statement.**

(a) The owner of a qualified project eligible for the Arkansas low income housing tax credit shall submit, at the time of filing the owner's income or gross premium tax return, an eligibility statement. In the case of failure to attach the eligibility statement, no Arkansas low income housing tax credit under this subchapter shall be allowed with respect to such project for that year until these copies are provided to the Department of Finance and Administration.

(b) If under 26 U.S.C. § 42, as amended, a portion of any federal low income housing tax credit taken with respect to a qualified project is required to be recaptured, the taxpayer claiming Arkansas low income housing tax credit with respect to such project shall also be required to recapture a portion of any Arkansas low income housing tax credit authorized by this subchapter. The state recapture amount shall be equal to the proportion of the Arkansas low income housing tax credit claimed by the taxpayer that equals the proportion the federal recapture amount bears to the original federal low income housing credit claimed by the taxpayer.

**History.** Acts 1997, No. 1332, § 3.

### **26-51-1704. Sale, assignment, and transfer of tax credit allowed.**

(a) All or any portion of Arkansas low income housing tax credit issued in accordance with the provisions of this subchapter may be transferred, sold or assigned but only in connection with the sale or transfer of the interest in the qualified project or in the taxpayer.

(b) An owner or transferee desiring to make a transfer, sale, or assignment as described in subsection (a) of this section shall submit to the Director of the Department of Finance and Administration a statement which describes the amount of Arkansas low income housing tax credit for which transfer, sale, or assignment of Arkansas low income housing tax credit is eligible. The owner shall provide to the director such information as is specified by the Department of Finance and Administration in regulations so that the Arkansas low income housing tax credit may be properly allocated.

(c) In the event that recapture of Arkansas low income housing tax credit is required pursuant to § 26-51-1703(b) of this subchapter, the statements submitted to the director as provided in this section shall include the proportion of the Arkansas low income housing tax credit required to be recaptured, the identity of each transferee subject to recapture, and the amount of Arkansas low income housing tax credit previously transferred to such transferee and such other information as is specified by the department in regulations.



**History.** Acts 1997, No. 1332, § 4.

## **26-51-1705. Rules and regulations.**

The Director of the Department of Finance and Administration and the Arkansas Development Finance Authority shall promulgate rules and regulations necessary to administer the provisions of this subchapter. No rule or portion of a rule promulgated under the authority of this section shall become effective until it has been approved by the director in accordance with the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

**History.** Acts 1997, No. 1332, § 5.

### **SUBCHAPTER 18 — SMALL BUSINESS CAPITAL FORMATION ACT**

**SECTION.**

26-51-1801. Small business stock capital gains.

**SECTION.**

26-51-1802. Effective date.

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**Effective Dates.** Acts 1997, No. 883, § 2: effective for taxable years beginning on and after January 1, 1998.

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## **26-51-1801. Small business stock capital gains.**

(a) There shall be allowed a deduction from net income for a qualified small business net capital gain recognized on the sale of qualified small business stock for any taxable year in an amount equal to the following:

(1) For qualified small business stock held for a period of five (5) years from the date of the purchase of the stock, fifty percent (50%);

(2) For qualified small business stock held for a period of six (6) years from the purchase of the stock, sixty percent (60%);

(3) For qualified small business stock held for a period of seven (7) years from the purchase of the stock, seventy percent (70%);

(4) For qualified small business stock held for a period of eight (8) years from the purchase of the stock, eighty percent (80%);

(5) For qualified small business stock held for a period of nine (9) years from the purchase of the stock, ninety percent (90%); and

(6) For qualified small business stock held for a period of ten (10) years from the purchase of the stock, one hundred percent (100%).

(b) As used in this subchapter:

(1) "Qualified small business" means any domestic corporation whose total capitalization does not exceed one hundred million dollars (\$100,000,000) and no more than ten percent (10%) of the firm's assets are held in the form of real estate during the holding periods set forth in subsection (a) of this section;

(2) "Qualified small business net capital gain" means the net capital gain for the taxable year determined by taking into account only gain or loss from sales or exchanges of qualified small business stock; and

(3) "Qualified small business stock" means stock issued directly by a qualified small business after December 31, 1998.

(c) Any taxpayer who seeks to qualify for the income tax deduction set forth in this section must:

(1) Obtain a certified statement from the corporation issuing the qualified business stock stating:

(i) The name and address of the purchaser;

(ii) The number of shares of qualified business stock purchased;

(iii) The amount paid by the original purchaser for the qualified business stock; and

(iv) The dates of purchase and sale of the qualified business stock; and

(2) Attach a copy of the statement described in subdivision (c) (1) of this section to the income tax return for the year the deduction is claimed.

**History.** Acts 1997, No. 883, § 1.

## **26-51-1802. Effective date.**

The provisions of this subchapter shall be in effect for taxable years beginning on and after January 1, 1998.

**History.** Acts 1997, No. 883, § 2.

## **SUBCHAPTER 19 — EMPLOYEE TUITION REIMBURSEMENT TAX CREDIT**

### **SECTION.**

26-51-1901. Legislative intent.

26-51-1902. Creation of tax incentive.

### **SECTION.**

26-51-1903. Eligibility.

**A.C.R.C. Notes.** Acts 2005, No. 1232, § 1, provided: "Legislative intent. (a) Accelerate Arkansas, a statewide group of volunteers whose mission is to foster economic growth in Arkansas by raising the average Arkansas wage to the level of the national average wage by using the essential building blocks of the knowledge-based economy to create an environment supporting entrepreneurship and continuous innovation, developed its five-point strategy to increase per capita income:

"(1) Support research and development that creates jobs;

"(2) Provide incentives that make risk capital available in the funding gap;

"(3) Encourage entrepreneurship and new enterprise development;

"(4) Sustain successful existing companies; and

"(5) Increase achievement in science, technology, engineering, and mathematics education.

"(b) These core strategies focus on the economic building blocks of research, entrepreneurship, risk capital, and the science and engineering workforce.

"(c) These core strategies are consistent with and supported by the findings in:

"(1) The Department of Economic Development's Report of the Task Force for the Creation of Knowledge-Based Jobs;

“(2) The Winthrop Rockefeller Foundation’s Entrepreneurial Arkansas: Connecting the Dots; and

by the Milken Institute and the Center for Business and Economic Research at the University of Arkansas.”

“(3) ‘Arkansas’ Position in the Knowledge-Based Economy’, a report prepared

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### **26-51-1901. Legislative intent.**

It is recognized that the reimbursement or payment by an employer of or for tuition for employee training or courses that aid in improving job skills is in the best interest of the state. Increasing the skills and abilities of the workforce allows Arkansas to compete for jobs that require specialized knowledge and talent not available in sufficient supply. In order to reward those employers who subsidize educational opportunities for their employees and to encourage other employers to make such benefits available to their employees, it is necessary to create an incentive.

**History.** Acts 1999, No. 1036, § 1;  
2005, No. 1232, § 7.

### **26-51-1902. Creation of tax incentive.**

(a) There shall be allowed a credit against the income tax imposed by the Income Tax Act of 1929, § 26-51-101 et seq., equal to thirty percent (30%) of the cost of tuition reimbursed or paid by an employer on behalf of a full-time, permanent employee for the cost of tuition, books, and fees for a program of undergraduate or postgraduate education from an accredited institution of postsecondary education located in Arkansas.

(b) In order to qualify for the income tax credit, the employer shall document that the employee has successfully completed the course.

(c) The incentive authorized by this section shall not exceed twenty-five percent (25%) of a business’s income tax liability in any year.

**History.** Acts 1999, No. 1036, § 2;  
2005, No. 1232, § 8.

### **26-51-1903. Eligibility.**

The following types of businesses are eligible for the tax benefit provided by § 26-51-1902:

(1) A manufacturer classified in sectors 31-33 in the North American Industry Classification System, as it existed on January 1, 2005;

(2) A business:

(A) Primarily engaged in:

(i) The design and development of prepackaged software;

(ii) Digital content production and preservation;

(iii) Computer processing and data preparation services; and

(iv) Information retrieval services; and



- (B) That derives at least seventy-five percent (75%) of its revenue from out-of-state sales and has less than ten percent (10%) of its retail sales to the general public;
- (3) A business primarily engaged in motion picture productions and that derives at least seventy-five percent (75%) of its revenue from out-of-state sales and has less than ten percent (10%) of its retail sales to the general public;
- (4) A distribution center for the reception, storage, or shipping of:
- (A) A business's own products or products that the business wholesales to retail businesses or ships to its own retail outlets;
- (B) Products owned by other companies with which the business has contracts for storage and shipping if seventy-five percent (75%) of the sales revenues are from out-of-state customers; or
- (C) Products for sale to the general public if seventy-five percent (75%) of the sales revenues are from out-of-state customers;
- (5) An office sector business with less than ten percent (10%) of its retail sales to the general public;
- (6) A national or regional corporate headquarters with less than ten percent (10%) of its retail sales to the general public;
- (7) A firm primarily engaged in commercial, physical, and biological research as classified in the North American Industry Classification System Code 541710, as in effect on January 1, 2005;
- (8) A scientific and technical services business if:
- (A) The business derives at least seventy-five percent (75%) of its revenue from out of state; and
- (B)(i) The average hourly wages paid by the business exceed one hundred fifty percent (150%) of the county or state average hourly wage, whichever is less.
- (ii) The average hourly wage threshold determined at the signing date of the financial incentive agreement shall be the threshold for the term of the agreement; and
- (9) Any other business classified as an eligible business by the Director of the Arkansas Economic Development Commission if the following conditions exist:
- (A) The business receives at least seventy-five percent (75%) of its revenue from out of state; and
- (B) The business proposes to pay wages in excess of one hundred ten percent (110%) of the county or state average wage, whichever is less.

**History.** Acts 1999, No. 1036, § 3;  
2005, No. 1232, § 9.

## SUBCHAPTER 20 — MANUFACTURER'S INVESTMENT TAX CREDIT ACT

SECTION.  
26-51-2001. Title.  
26-51-2002. Definitions.

SECTION.  
26-51-2003. Certain other benefits precluded.

## SECTION.

26-51-2004. Credit granted.

26-51-2005. Qualification and determination of credit.

## SECTION.

26-51-2006. Administration.

26-51-2007. Availability.

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**Cross References.** Economic Investment Tax Credit Act, § 26-52-701 et seq.

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**26-51-2001. Title.**

This subchapter may be known and cited as the “Manufacturer’s Investment Tax Credit Act”.

**History.** Acts 2001, No. 1661, § 1.

**26-51-2002. Definitions.**

As used in this subchapter:

(1) “Director” means the Director of the Arkansas Economic Development Commission;

(2) “Eligible business” means any person engaged in a business classified as manufacturing of paper and allied products in Standard Industrial Classification Code 2600 that has been in continuous operation in Arkansas for at least two (2) years prior to the initial application to the director for income tax credits under the provision of this subchapter;

(3) “Modernization” means to increase efficiency or to increase productivity of the business through investment in machinery or equipment, or both, and shall not include costs for routine maintenance;

(4) “Person” means a person as defined by § 26-18-104;

(5) “Project” means any construction, expansion, or modernization in Arkansas by an eligible business whose investment shall exceed one hundred million dollars (\$100,000,000) between August 13, 2001, and December 31, 2004, for projects involving either single or multiple locations within the State of Arkansas, including the cost of the land, buildings, and equipment used in the construction, expansion, or modernization and which construction, expansion, or modernization has been approved by the Arkansas Economic Development Commission as a construction, expansion, or modernization project that qualifies for the credit under the provisions of this subchapter; and

(6) “Routine maintenance” means the replacement of existing machinery parts with like parts.

**History.** Acts 2001, No. 1661, § 2.

**26-51-2003. Certain other benefits precluded.**

(a) A recipient of benefits under this subchapter is precluded from receiving benefits under the Arkansas Enterprise Zone Act of 1993, § 15-4-1701 et seq., for the same project.

(b) A recipient of benefits under this subchapter is precluded from receiving benefits under the Economic Investment Tax Credit Act, § 26-52-701 et seq., for the same project.

**History.** Acts 2001, No. 1661, § 3.

**RESEARCH REFERENCES**

**U. Ark. Little Rock L. Rev.** Survey of      ssembly, Tax Law, 24 U. Ark. Little Rock L.  
Legislation, 2001 Arkansas General As-      Rev. 613.

**26-51-2004. Credit granted.**

There is granted a credit against the state income tax liability of an eligible business of seven percent (7%) of the amount of the total project cost of any project, subject to the limit set out in § 26-51-2005.

**History.** Acts 2001, No. 1661, § 4.

**26-51-2005. Qualification and determination of credit.**

(a)(1) In order to qualify for and receive the credits afforded by this subchapter, any eligible business undertaking a project shall submit a project plan to the Director of the Arkansas Economic Development Commission at least thirty (30) calendar days prior to the start of construction.

(2) The plan submitted to the Arkansas Economic Development Commission shall contain such information as may be required by the Director of the Arkansas Economic Development Commission to determine eligibility.

(b)(1) Upon determination by the Director of the Arkansas Economic Development Commission that the project qualifies for credit under this subchapter, the Director of the Arkansas Economic Development Commission shall certify to the Director of the Department of Finance and Administration that the project is qualified and transmit with his or her certification the documents upon which the certification was based or copies.

(2) Upon receipt by the Director of the Department of Finance and Administration of a certification from the Director of the Arkansas Economic Development Commission that an eligible business is entitled to credit under this subchapter, the Director of the Department of Finance and Administration shall provide forms to the eligible business on which to claim the credit.

(c)(1) At the end of the calendar year in which the application was made to the Director of the Arkansas Economic Development Commission and at the end of each calendar year thereafter until the project is



completed, the eligible business shall certify on the form provided by the Director of the Department of Finance and Administration the amount of expenditures on the project during the preceding calendar year.

(2)(A) Upon receipt of the form certifying expenditures, the Director of the Department of Finance and Administration shall determine the amount due as a credit for the preceding calendar year and issue a memorandum of credit to the eligible business in the amount of seven percent (7%) of the expenditure.

(B)(i)(a) Except as provided in § 26-51-2007, the credit shall then be applied against the eligible business' state income tax liability in the year following the year of the expenditure.

(b) However, if the credit is not used in the calendar year following the expenditure, it may be carried over to the next succeeding calendar year for a total period of six (6) years following the year in which the credit was first available for use or until the credit is exhausted, whichever occurs first.

(ii) In no event shall the credit used on any regular return be more than fifty percent (50%) of the eligible business' total state income tax liability for the reporting period.

(iii) The Director of the Department of Finance and Administration may require proof of these expenditures.

(iv) The Director of the Department of Finance and Administration may examine those records necessary and specific to the project to determine credit eligibility. Any credits disallowed shall be subject to payment in full.

(d) In order to receive credit for project costs, the costs must be incurred within five (5) years from the date of certification of the project plan by the Director of the Arkansas Economic Development Commission.

**History.** Acts 2001, No. 1661, § 5.

## **26-51-2006. Administration.**

(a) A person claiming credit under this subchapter is a "taxpayer" within the meaning of § 26-18-104 and shall be subject to all applicable provisions of § 26-18-104.

(b) Administration of the provisions of this subchapter shall be under the provisions of the Arkansas Tax Procedure Act, § 26-18-101 et seq.

(c) The Director of the Arkansas Economic Development Commission may promulgate such rules and regulations as are necessary to carry out the intent and purposes of this subchapter.

**History.** Acts 2001, No. 1661, § 6.

**26-51-2007. Availability.**

(a) The state income tax credit provided by this subchapter shall not be claimed on any income tax return filed or required by law to be filed prior to July 1, 2003.

(b) State income tax credits arising under this subchapter that but for the provisions of this section would be available to be claimed on an income tax return required to be filed before July 1, 2003, shall first be available on income tax returns due after July 1, 2003, and shall be subject to the same carryover provisions for unused credits as otherwise provided in this subchapter.

**History.** Acts 2001, No. 1661, § 7.

**SUBCHAPTER 21 — GIFT OF LIFE ACT****SECTION.**

26-51-2101. Title.

26-51-2102. Legislative findings and intent.

**SECTION.**

26-51-2103. Income tax deduction for human organ donation.

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**Effective Dates.** Acts 2005, No. 668, § 3: effective for tax years beginning on and after January 1, 2005.

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**26-51-2101. Title.**

This subchapter shall be known as and may be cited as the “Gift of Life Act”.

**History.** Acts 2005, No. 668, § 1.

**26-51-2102. Legislative findings and intent.**

The General Assembly finds that organ donation is a courageous, admirable, and vital demonstration of one’s commitment to the value of human life and, in many instances, is necessary for the preservation of life itself.

**History.** Acts 2005, No. 668, § 1.

**26-51-2103. Income tax deduction for human organ donation.**

(a) As used in this section, “human organ” means all or part of a human’s liver, pancreas, kidney, intestine, lung, or bone marrow.

(b) In computing net income, a taxpayer may deduct up to ten thousand dollars (\$10,000) if, while living, the taxpayer or the taxpayer’s dependent who is claimed under § 26-51-501, donates one (1) or

more of his or her human organs to another human for human organ transplantation.

(c) A deduction that is claimed under subsection (b) of this section may only be claimed in the taxable year in which the human organ transplantation occurs.

(d)(1) A taxpayer may claim the deduction under subsection (b) of this section only one (1) time in his or her lifetime.

(2) The deduction may be claimed for only the following unreimbursed expenses that are incurred by the taxpayer and are related to the human organ donation of the taxpayer or the taxpayer's dependent:

- (A) Travel expenses;
- (B) Lodging expenses;
- (C) Lost wages; and
- (D) Medical expenses.

**History.** Acts 2005, No. 668, § 1.

**SUBCHAPTER 22 — ARKANSAS HISTORIC REHABILITATION INCOME TAX  
CREDIT ACT**

SECTION.	SECTION.
26-51-2201. Title.	26-51-2205. Procedure to claim tax credit
26-51-2202. Purpose.	— Transferring credit.
26-51-2203. Definitions.	26-51-2206. Fees.
26-51-2204. Arkansas historic rehabilitation income tax credit.	26-51-2207. Rules.

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**Effective Dates.** Acts 2009, No. 498, § 4, as amended by Acts 2011, No. 831, § 1, provided: “This act is effective for tax years beginning on and after January 1, 2009, and ending on or before December 31, 2021.”

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**26-51-2201. Title.**

This subchapter shall be known and may be cited as the “Arkansas Historic Rehabilitation Income Tax Credit Act”.

Acts 2009, No. 498, § 1.

**26-51-2202. Purpose.**

The purpose of this subchapter is to encourage economic development and community revitalization within existing state and federal infrastructure by providing an income tax credit to promote the rehabilitation of historic structures throughout Arkansas.

Acts 2009, No. 498, § 1.



**26-51-2203. Definitions.**

As used in this subchapter:

(1) "Arkansas historic rehabilitation income tax credit" means an income tax credit against the income tax imposed by the Income Tax Act of 1929, § 26-51-101 et seq., and the premium tax levied under §§ 26-57-601 — 26-57-605 that includes:

(A) An income tax credit for an income-producing property that qualifies for a federal rehabilitation tax credit; and

(B) An income tax credit for a nonincome-producing property;

(2) "Certified rehabilitation" means a substantial rehabilitation of an eligible property that has been issued an eligibility certificate;

(3) "Certification of completion" means a certificate issued by the Department of Arkansas Heritage certifying that a project is a certified rehabilitation of an eligible property that qualifies for the Arkansas historic rehabilitation income tax credit;

(4) "Eligible property" means property that is located in the state that is:

(A) Income-producing property that:

(i) Qualifies as a certified historic structure under 26 U.S.C. § 47, as it existed on January 1, 2009; or

(ii) Will qualify as a certified historic structure following certified rehabilitation; or

(B) Nonincome-producing property that is:

(i) Listed in the National Register of Historic Places;

(ii) Designated as contributing to a district listed in the National Register of Historic Places; or

(iii) Eligible for designation as contributing to a district listed in the National Register of Historic Places following certified rehabilitation;

(5) "Federal rehabilitation tax credit" means the federal tax credit as provided under 26 U.S.C. § 47, as it existed on January 1, 2009;

(6) "Holder" means the holder of a certification of completion that is:

(A) A person, firm, or corporation subject to the income tax imposed by the Income Tax Act of 1929, § 26-51-101 et seq.; or

(B) An insurance company paying the premium tax on its gross premium receipts;

(7) "Owner" means a person or an entity that owns eligible property and is the initial recipient of the certification of completion from the department;

(8) "Premium tax" means a tax levied under §§ 26-57-603 — 26-57-605; and

(9) "Qualified rehabilitation expenses" means costs and expenses incurred to complete a certified rehabilitation that are qualified rehabilitation expenses under the federal rehabilitation tax credit or under the Arkansas historic rehabilitation income tax credit.

**26-51-2204. Arkansas historic rehabilitation income tax credit.**

(a) There is allowed an income tax credit up to the amount of tax imposed by the Income Tax Act of 1929, § 26-51-101 et seq., or the premium tax to a holder of an Arkansas historic rehabilitation income tax credit.

(b) The Arkansas historic rehabilitation income tax credit shall be in an amount equal to twenty-five percent (25%) of the total qualified rehabilitation expenses incurred by the owner to complete a certified rehabilitation up to the first:

(1) Five hundred thousand dollars (\$500,000) of qualified rehabilitation expenses on income-producing property; or

(2) One hundred thousand dollars (\$100,000) of qualified rehabilitation expenses on nonincome-producing property.

(c)(1) The Department of Arkansas Heritage shall only issue Arkansas historic rehabilitation income tax credits for up to four million dollars (\$4,000,000) in any one (1) fiscal year.

(2) Any unused Arkansas historic rehabilitation income tax credits shall not be carried over to the following fiscal year for use by the department.

(3) Any certification of completion that would cause the Arkansas historic rehabilitation income tax credit to exceed the amounts listed in subdivision (c)(1) of this section during the fiscal year will be carried forward for consideration during the following fiscal year.

(d) The Arkansas historic rehabilitation income tax credit shall be available to an owner of an eligible property that:

(1) Completes a certified rehabilitation that is placed in service after January 1, 2009;

(2) Has a minimum investment of twenty-five thousand dollars (\$25,000) in qualified rehabilitation expenses; and

(3) Is not receiving a tax credit under any other state law for the same eligible property.

(e) Upon completion of a rehabilitation, the owner shall submit documentation required by the department to verify that the completed rehabilitation qualifies as a certified rehabilitation.

(f) If the department determines that a rehabilitation qualifies as a certified rehabilitation and that the certified rehabilitation is complete, the department shall issue a freely transferable certification of completion specifying the total amount of the qualified rehabilitation expenses and Arkansas historic rehabilitation income tax credit allowed.

(g)(1) If the owner requests a review of the department's determination under subsection (f) of this section, the owner shall submit a written request for review of the determination.

(2) The owner shall submit the request in writing to the department within thirty (30) days of the date of notification to the owner of the determination.

(h)(1) The owner shall certify to the department the validity of costs and expenses claimed as qualified rehabilitation expenses and shall

maintain a record supporting the claim for at least five (5) years after the issuance of the certification of completion.

(2) An owner's record supporting a claim for qualified rehabilitation expenses may be reviewed by the department, the appropriate tax collection authority, or a holder.

Acts 2009, No. 498, § 1.

**26-51-2205. Procedure to claim tax credit — Transferring credit.**

(a)(1) A holder shall submit the certification of completion and documents proving an assignment, if any, with the appropriate tax collection authority at the time of filing the holder's income tax return or premium tax return.

(2) The appropriate tax collection authority may refuse to recognize the Arkansas historic rehabilitation income tax credit claimed if the holder fails to submit the certification of completion and any assignment documents.

(b) The amount of the Arkansas historic rehabilitation income tax credit that may be used by a holder for a taxable year may equal but shall not exceed the amount of income tax or premium tax due.

(c) A holder of an unused Arkansas historic rehabilitation income tax credit may carry forward part or all of an Arkansas historic rehabilitation income tax credit for five (5) consecutive taxable years to apply against the holder's income taxes due or the holder's premium tax due.

(d)(1) An owner of an Arkansas historic rehabilitation income tax credit may freely transfer, sell, or assign part or all of the Arkansas historic rehabilitation income tax credit amount identified in the certification of completion.

(2) A subsequent holder may transfer, sell, or assign part or all of the remaining Arkansas historic rehabilitation income tax credit.

(e) An owner may sell the owner's eligible property after the issuance of the certification of completion.

(f) An Arkansas historic rehabilitation income tax credit granted to a partnership, Subchapter S corporation, a limited liability company taxed as a partnership, or multiple owners of property shall be passed through to the partners, members, or owners respectively on a pro rata basis or pursuant to an executed agreement among the partners, members, or owners documenting an alternate distribution method.

(g)(1) A holder may use the Arkansas historic rehabilitation income tax credit to offset up to one hundred percent (100%) of the state income taxes due or premium tax due from the holder.

(2) A holder is not required to have any ownership or other interest in the eligible property for which an Arkansas historic rehabilitation income tax credit is claimed.

(3) An Arkansas historic rehabilitation income tax credit may be used up to its total amount by any holder without limitation and is not subject to limits imposed by federal law or regulation on the use of federal rehabilitation tax credits.



(h) An owner or holder that assigns part or all of an Arkansas historic rehabilitation income tax credit shall perfect the transfer by notifying the Department of Arkansas Heritage and the appropriate tax collection authority in writing within thirty (30) calendar days following the effective date of the transfer and shall provide any information as may be required by the department and the appropriate tax collection authority to administer and carry out this subchapter and to ensure proper tracking of the ownership of the unused Arkansas historic rehabilitation income tax credit.

(i)(1) Any consideration received for the transfer of the Arkansas historic rehabilitation income tax credit shall not be included as income taxable by the State of Arkansas.

(2) Any consideration paid for the transfer of the Arkansas historic rehabilitation income tax credit shall not be deducted from income taxable by the State of Arkansas.

Acts 2009, No. 498, § 1.

**Cross References.** Federal Subchapter S adopted, § 26-51-409.

### **26-51-2206. Fees.**

(a)(1) The Department of Arkansas Heritage may charge a fee to process:

(A) An application for an Arkansas historic rehabilitation income tax credit; and

(B) A request to record transfers of interests in an Arkansas historic rehabilitation income tax credit to other holders.

(2) The fee for processing an application for an Arkansas historic rehabilitation income tax credit shall not exceed two and five-tenths percent (2.5%) of the amount of the Arkansas historic rehabilitation income tax credit applied for or seventy-five hundredths percent (0.75%) of the amount of the Arkansas historic rehabilitation income tax credit transferred, whichever is less.

(b) A fee collected under this subchapter by the department shall be considered cash funds of the department and shall be used for the administration of this subchapter.

Acts 2009, No. 498, § 1.

### **26-51-2207. Rules.**

(a) The Department of Arkansas Heritage shall promulgate rules to implement this subchapter that shall include criteria for the prioritizing of the rehabilitation applications and that will stimulate the local economy where the property is located, including without limitation the criteria that the rehabilitation project will be prioritized in the following order:

(1) Result in the creation of a new business;

(2) Result in the expansion of an existing business;

(3) Establish or contribute to the establishment of a tourism attraction as defined by the Department of Parks and Tourism;

(4) Contribute to the revitalization of a specific business district; or

(5) Be a key property in the revitalization of a specific neighborhood.

(b) The Department of Arkansas Heritage shall consult with the Department of Finance and Administration, the Arkansas Economic Development Commission, and the State Insurance Department in promulgating rules under this subchapter.

(c) The Department of Parks and Tourism shall promulgate rules to define a "tourism attraction" as provided in subdivision (a)(3) of this section.

Acts 2009, No. 498, § 1.

### SUBCHAPTER 23 — LOTTERY WITHHOLDING ACT

#### SECTION.

26-51-2301. Title.

26-51-2302. Definitions.

26-51-2303. Administration.

26-51-2304. Amount deducted and withheld — Credit.

#### SECTION.

26-51-2305. Withholding return, reporting, and payment — Lottery.

26-51-2306. Duties of the claim centers and payees.

#### **26-51-2301. Title.**

This subchapter may be cited as the "Lottery Withholding Act".

**History.** Acts 2010, No. 265, § 37;  
2010, No. 294, § 37.

#### **26-51-2302. Definitions.**

As used in this subchapter:

(1) "Claim center" means a claim center established by the Arkansas Lottery Commission under § 23-115-207;

(2) "Lottery" means the same as defined in § 23-115-103; and

(3) "Lottery winnings" means the proceeds of a lottery prize based on the total amount paid from an Arkansas lottery or from a multistate or multisoovereign lottery without reduction for the amount paid for the lottery ticket.

**History.** Acts 2010, No. 265, § 37;  
2010, No. 294, § 37.

#### **26-51-2303. Administration.**

(a) This subchapter shall be administered in accordance with the Arkansas Tax Procedure Act, § 26-18-101 et seq.

(b) The Director of the Department of Finance and Administration shall make and prescribe such rules, regulations, and forms as he or she deems necessary to administer this subchapter.

**History.** Acts 2010, No. 265, § 37;  
2010, No. 294, § 37.

**26-51-2304. Amount deducted and withheld — Credit.**

(a) A claim center making a payment of lottery winnings on a single lottery ticket of more than five thousand dollars (\$5,000) shall deduct and withhold an amount equal to seven percent (7%) of each payment of the lottery winnings.

(b) The amount deducted and withheld under this section from any lottery winnings paid to a person during the income year shall be credited against the income tax liability of that person under the Income Tax Act of 1929, § 26-51-101 et seq.

**History.** Acts 2010, No. 265, § 37;  
2010, No. 294, § 37.

**26-51-2305. Withholding return, reporting, and payment — Lottery.**

(a) A claim center shall register to withhold income tax under § 26-51-2304 from lottery winnings in the manner prescribed by the Director of the Department of Finance and Administration.

(b) The withholding account used to report and remit the withholding on wages shall not be used to report withholding on lottery winnings.

(c) A separate account for withholding on lottery winnings shall be obtained from the Revenue Division of the Department of Finance and Administration.

(d) Each claim center shall file a monthly return and remit the income tax withheld from lottery winnings on or before the fifteenth day of the month following the month in which the income tax was withheld.

(e) A claim center shall keep the following records and information for six (6) years after the date the income tax becomes due or is paid, whichever is later:

- (1) The total lottery winnings paid;
- (2) The amount of lottery winnings income tax withheld and remitted;
- (3) The name, address, social security number or taxpayer identification number, and amount of lottery winnings of each person in receipt of lottery winnings; and
- (4) The name, address, and taxpayer identification number of the claim center.

(f)(1) A claim center shall provide two (2) copies of a statement to each person who received lottery winnings and had an amount withheld under § 26-51-2304 during the income year before January 31 following the close of the income year.

- (2) Each statement shall contain the following:



(A) The name, address, and social security number or taxpayer identification number of the person in receipt of lottery winnings;

(B) The total amount of the lottery winnings subject to withholding that was paid by the claim center to the recipient of the lottery winnings for the income tax year;

(C) The total amount withheld from the recipient's lottery winnings by the claim center under this subchapter for the income year;

(D) The name, address, and Arkansas identification number of the claim center; and

(E) Such other information as the director shall require by rule.

**History.** Acts 2010, No. 265, § 37;  
2010, No. 294, § 37.

### **26-51-2306. Duties of the claim centers and payees.**

(a)(1) The Arkansas Lottery Commission is liable for amounts required to be deducted and withheld by a claim center under this subchapter regardless of whether the amounts were in fact deducted or withheld.

(2) Any sum withheld in accordance with this subchapter is deemed to be held in trust for the State of Arkansas and shall be recorded by the claim center in a ledger account so as to clearly indicate the amount of income tax withheld and that the amount is the property of the State of Arkansas.

(b) Each person that is subject to this subchapter and who is to receive a payment of lottery winnings or is entitled to any portion of the payment of lottery winnings shall furnish the claim center making the payment a statement, made under penalty of perjury, containing his or her:

(1) Name;

(2) Address; and

(3) Social security number or taxpayer identification number.

**History.** Acts 2010, No. 265, § 37;  
2010, No. 294, § 37.

### **SUBCHAPTER 24 — ARKANSAS CENTRAL BUSINESS IMPROVEMENT DISTRICT REHABILITATION AND DEVELOPMENT INVESTMENT TAX CREDIT ACT [EFFECTIVE IF CONTINGENCY IN § 26-51-2412 IS MET]**

#### **SECTION.**

26-51-2401. Title.

26-51-2402. Purpose.

26-51-2403. Definitions.

26-51-2404. Qualified project.

26-51-2405. Eligibility certificate.

26-51-2406. The projected rehabilitation  
or development expendi-  
tures.

#### **SECTION.**

26-51-2407. Investment tax credits.

26-51-2408. Procedure to claim the in-  
vestment tax credit.

26-51-2409. Credits exceeding tax liabil-  
ity — Assignment.

26-51-2410. Fees.

26-51-2411. Enforcement — Deposit of  
fees.

## SECTION.

26-51-2412. Effective date.

**26-51-2401. Title.**

This subchapter shall be known and may be cited as the “Arkansas Central Business Improvement District Rehabilitation and Development Investment Tax Credit Act”.

**History.** Acts 2011, No. 1166, § 1.

**26-51-2402. Purpose.**

The purpose of this subchapter is to encourage economic development within central business improvement districts by promoting the rehabilitation and development of structures within the central business improvement districts.

**History.** Acts 2011, No. 1166, § 1.

**26-51-2403. Definitions.**

As used in this subchapter:

(1) “Central business improvement district” means the central business district of any municipality of the first class or municipality of the second class of the state that has been designated as a central business improvement district under the Central Business Improvement District Act, § 14-184-101 et seq.;

(2) “Development” means the new construction of a structure or the expansion or rehabilitation of an existing structure;

(3) “Eligibility certificate” means a certificate:

(A) Authorized and issued by the governing body of the central business improvement district certifying that a project is a qualified project, has met the requirements of this subchapter, and is an eligible central business improvement district property; and

(B) That specifies the total amount of qualified rehabilitation or development expenditures allowed;

(4) “Eligible central business improvement district property” means property that is located within the physical boundaries of a central business improvement district and is a qualified project;

(5) “Governing body of the central business improvement district” means the board of commissioners of the central business improvement district;

(6) “Governing body of the municipality” means the city council, board of directors, commission, or other municipal body exercising general legislative power in the municipality;

(7) “Investment tax credit” means the Arkansas Central Business Improvement District Rehabilitation and Development investment tax credit under this subchapter;

(8) “Qualified project” means eligible central business improvement district property that has met the requirements of § 26-51-2404(b) and

has been approved for rehabilitation or development by the governing body of the central business improvement district where the eligible central business improvement district property is located;

(9)(A) "Qualified rehabilitation or development expenditures" means expenditures approved by the governing body of the central business improvement district where the eligible central business improvement district property is located that meet the requirements of this subchapter.

(B) "Qualified rehabilitation or development expenditures" does not include:

(i) The cost of acquiring the eligible central business improvement district property or real estate licensee's fees associated with the eligible central business improvement district property;

(ii) Taxes due on the eligible central business improvement district property;

(iii) Insurance costs;

(iv) Costs of landscaping; or

(v) Sales and marketing costs; and

(10) "Taxpayer" means an individual, a partnership, limited liability company, or corporation subject to the state income tax imposed by the Income Tax Act of 1929, § 26-51-101 et seq.

**History.** Acts 2011, No. 1166, § 1.

#### **26-51-2404. Qualified project.**

(a) To apply for a designation as a qualified project, a taxpayer shall submit to the governing body of the central business improvement district where the property to be rehabilitated or developed is located all forms and fees required by the governing body of the central business improvement district.

(b) To qualify as eligible central business improvement district property, the taxpayer shall demonstrate that the property to be rehabilitated or developed meets the following requirements:

(1) The project must be planned within the physical boundaries of the central business improvement district;

(2) A full set of plans by a licensed architect must be submitted to the governing body of the central business improvement district where the property to be rehabilitated or developed is located;

(3) The project must meet all zoning and building codes of the municipality in which the property to be rehabilitated or developed is located;

(4) The project must meet the design guidelines, be compatible with the overall plan for the central business improvement district, and have a use that the governing body of the central business improvement district determines as maintaining the overall integrity of the central business improvement district;



(5) The qualified rehabilitation or development expenditures for the project must have occurred on or after the effective date of this subchapter; and

(6) The qualified rehabilitation or development expenditures for the project must be greater than thirty thousand dollars (\$30,000).

(c) After evaluating the information provided by the taxpayer, the governing body of the central business improvement district shall issue a determination about whether the property to be rehabilitated or developed is a qualified project.

(d)(1) If the taxpayer is dissatisfied with the determination made by the governing body of the central business improvement district, the taxpayer may request that a review of that determination be made by the governing body of the municipality.

(2)(A) The request for review shall be made in writing to the governing body of the municipality within thirty (30) days from the date of the determination of the governing body of the central business improvement district under subsection (c) of this section.

(B) The decision of the governing body of the municipality is a final decision.

**History.** Acts 2011, No. 1166, § 1.

### **26-51-2405. Eligibility certificate.**

(a) After a property to be rehabilitated or developed is designated a qualified project under § 26-51-2404 and the taxpayer completes the rehabilitation or development work, the taxpayer shall submit to the governing body of the central business improvement district where the eligible central business improvement district property is located all documentation and forms required by the governing body of the municipality and the governing body of the central business improvement district to verify that the qualified project has been completed.

(b) If the governing body of the central business improvement district determines that the qualified project has been successfully completed, the governing body of the central business improvement district shall issue an eligibility certificate.

(c)(1) If the taxpayer is dissatisfied with the determination made by the governing body of the central business improvement district under subsection (b) of this section, the taxpayer may request that a review of that determination be made by the governing body of the municipality.

(2)(A) The request for review shall be made in writing to the governing body of the municipality within thirty (30) days from the date of the determination of the governing body of the central business improvement district under subsection (b) of this section.

(B) The decision of the governing body of the municipality is a final decision.

(d) Upon issuance of an eligibility certificate, the governing body of the central business improvement district immediately shall report in writing to the Department of Finance and Administration:

- (1) The name and address of the taxpayer;
- (2) The taxpayer identification number;
- (3) The date of issuance of the eligibility certificate;
- (4) The amount of the eligibility certificate; and
- (5) Any other information as determined necessary by the department.

**History.** Acts 2011, No. 1166, § 1.

### **26-51-2406. The projected rehabilitation or development expenditures.**

(a) The projected qualified rehabilitation or development expenditures must occur during a period not to exceed eighteen (18) months.

(b) For the rehabilitation or development of an existing structure, the projected qualified rehabilitation or development expenditures must equal or exceed the adjusted basis of the existing structure, excluding the land, before the qualified rehabilitation or development work begins.

**History.** Acts 2011, No. 1166, § 1.

### **26-51-2407. Investment tax credits.**

(a) There is allowed an investment tax credit against the tax imposed by the Income Tax Act of 1929, § 26-51-101 et seq., for any taxpayer incurring costs and expenses that are qualified rehabilitation or development expenditures of eligible central business improvement district property.

(b) The investment tax credit is equal to twenty-five percent (25%) of qualified rehabilitation or development expenditures incurred for a qualified project up to the first:

(1) Five hundred thousand dollars (\$500,000) on income-producing property; or

(2) Two hundred thousand dollars (\$200,000) on nonincome-producing property.

(c)(1) The investment tax credit for a qualified project covering income-producing eligible central business improvement district property shall be taken in the tax year in which the eligible central business improvement district property is placed in service.

(2) The investment tax credit for a qualified project covering residential eligible central business improvement district property or other nonincome-producing eligible central business improvement district property shall be taken in the tax year the qualified project is completed.

(d) A taxpayer who receives an investment tax credit under this section shall not claim any other state or local tax credit or deduction based on the qualified rehabilitation or development expenditures except for the deduction for normal depreciation of the eligible central business improvement district property.

(e)(1) The Department of Finance and Administration shall maintain an ongoing record of the eligibility certificates awarded each fiscal year.

(2) The department shall only issue investment tax credits up to one million dollars (\$1,000,000) in any one (1) fiscal year on a first-come, first-served basis.

**History.** Acts 2011, No. 1166, § 1.

#### **26-51-2408. Procedure to claim the investment tax credit.**

(a) To claim the investment tax credit, a taxpayer shall submit the eligibility certificate issued by the governing body of the central business improvement district to the Department of Finance and Administration.

(b)(1) In addition to the submission under subsection (a) of this section, the taxpayer shall submit an eligibility certificate at the time of filing the taxpayer's income tax return.

(2) If the taxpayer fails to attach the eligibility certificate to the taxpayer's income tax return, an investment tax credit is not allowed with respect to the qualified project for that tax year until the eligibility certificate is provided to the department.

**History.** Acts 2011, No. 1166, § 1.

#### **26-51-2409. Credits exceeding tax liability — Assignment.**

(a)(1) The amount of the investment tax credit that may be used by a taxpayer for a taxable year shall not exceed the amount of income tax due from the taxpayer.

(2) Any unused investment tax credit may be carried over for five (5) consecutive taxable years for credit against the state income tax due from the taxpayer.

(3)(A) The investment tax credit may be transferred, sold, or assigned only one (1) time.

(B) A taxpayer who transfers, sells, or assigns the investment tax credit shall notify in writing the Department of Finance and Administration within thirty (30) days of the following information:

(i) The name, address, and taxpayer identification number of the transferee, purchaser, or assignee of the investment tax credit;

(ii) The original issuance date of the investment tax credit and the date of the transfer, purchase, or assignment of the investment tax credit; and

(iii) The amount paid for the investment tax credit by the transferee, purchaser, or assignee.

(C)(i) A transferee, purchaser, or assignee of an investment tax credit is entitled for the remaining carry-forward period to the investment tax credit under this subchapter only to the extent the investment tax credit is still available and only for the portion of the investment tax credit that has not been previously claimed by the transferor, seller, or assignor.



(ii) A transferee, purchaser, or assignee may not transfer, sell, or assign the investment tax credit.

(D) The department may refuse to recognize the investment tax credit if the transferor, seller, or assignor or the transferee, purchaser, or assignee of the investment tax credit fails to submit the eligibility certificate and any transfer, purchase, or assignment documents.

(4) An investment tax credit granted to a partnership, a limited liability company taxed as a partnership, or multiple owners of eligible central business improvement district property shall be passed through to the partners, members, or owners respectively on a pro rata basis or pursuant to an executed agreement between or among the partners, members, or owners documenting an alternative distribution method.

(b)(1) Any assignee of an investment tax credit may use an acquired investment tax credit to offset up to one hundred percent (100%) of the state income tax due from the assignee, but the offset shall not exceed the amount of income tax due for the taxable year.

(2) An assignor of an investment tax credit shall perfect an assignment to an assignee of an investment tax credit by notifying the department in writing within thirty (30) calendar days following the effective date of the assignment and shall provide any information required by the department to administer and carry out this subchapter.

**History.** Acts 2011, No. 1166, § 1.

### **26-51-2410. Fees.**

(a) The governing body of the central business improvement district may charge a fee of two hundred fifty dollars (\$250) for the services it provides under this subchapter.

(b) The fee collected under subsection (a) of this section by the governing body of the central business improvement district shall be considered cash funds of the central business improvement district and shall be used for the administration of this subchapter.

**History.** Acts 2011, No. 1166, § 1.

### **26-51-2411. Enforcement — Deposit of fees.**

(a)(1) The Director of the Department of Finance and Administration may make rules and prescribe forms for a taxpayer to claim the investment tax credit provided by this subchapter and for the proper enforcement of the claim.

(2) The Department of Finance and Administration shall consult with the governing bodies of the central business improvement districts in making rules under this subchapter to maintain consistency with the purpose and intent of this subchapter.

(b) A fee collected under § 26-51-2404 by the governing body of the central business improvement district shall be deposited into the

treasury cash fund of the governing body of a central business improvement district receiving the fee.

(c) The department and the governing body of a central business improvement district may inspect facilities and records of a taxpayer requesting or receiving an investment tax credit as necessary to verify a claim.

(d) The director shall demand the repayment of any investment tax credits taken in excess of the investment tax credit allowed by this subchapter.

**History.** Acts 2011, No. 1166, § 1.

**26-51-2412. Effective date.**

(a)(1) This subchapter takes effect only if the Chief Fiscal Officer of the State certifies that sufficient funding for this subchapter is available in the General Improvement Fund.

(2) If the Chief Fiscal Officer of the State certifies that sufficient funding for this subchapter is available in the fund, this subchapter is effective for tax years beginning on and after January 1 of the year following the certification and continues for a period of two (2) years.

(3) If the Chief Fiscal Officer of the State certifies that sufficient funding for this subchapter is available in the fund, he or she shall notify the Arkansas Code Revision Commission of the effective date of this subchapter.

(b) An unused investment tax credit under this subchapter that is earned before the end of the period stated in subsection (a) of this section may be carried forward on an income tax return for up to five (5) years after the year in which the investment tax credit was first earned or until exhausted, whichever event occurs first.

**History.** Acts 2011, No. 1166, § 1.

**SUBCHAPTER 25 — INCOME TAX REFUND CHECK-OFF AND CONTRIBUTION PROGRAMS**

SECTION.	SECTION.
26-51-2501. Contribution to Olympic Committee Program.	26-51-2506. Military Family Relief Check-off Program.
26-51-2502. Disaster Relief Income Tax Check-Off Program.	26-51-2507. Contribution to Arkansas Area Agencies on Aging.
26-51-2503. Contribution to the Arkansas School for the Blind and the Arkansas School for the Deaf.	26-51-2508. Income tax check-off program for contributions to the Newborn Umbilical Cord Blood Initiative.
26-51-2504. Baby Sharon Act.	26-51-2509. Contribution to Arkansas Tax-Deferred Tuition Savings Program account.
26-51-2505. Voluntary contributions to Organ Donor Awareness Education Trust Fund.	

**26-51-2501. Contribution to Olympic Committee Program.**

(a)(1) The Revenue Division of the Department of Finance and Administration shall include on the Arkansas individual income tax forms, including those forms on which a husband and wife file separately on the same form, and on all corporate income tax forms, a designation as follows:

(A) If you are entitled to a refund, check if you wish to designate ☐ \$1, ☐ \$5, ☐ \$10, ☐ \$...(write in amount), or ☐ all refund due, of your tax refund for the United States Olympic Committee Program. Your refund will be reduced by this amount.

(B) If you owe an additional amount, check if you wish to contribute an additional ☐ \$1, ☐ \$5, ☐ \$10, ☐ \$...(write in amount) for the United States Olympic Committee Program. If you wish to make a contribution to the program, you must enclose a separate check for the amount of your contribution, payable to the United States Olympic Committee Program.

(2) The United States Olympic Committee check-off program on state income tax returns shall be effective beginning with the returns for the 1993 income year and each income year thereafter.

(3) The Director of the Department of Finance and Administration shall have the authority to promulgate all rules and regulations and all income tax forms, returns, and schedules necessary to carry out this program.

(b) The Department of Finance and Administration shall quarterly certify to the Treasurer of State the amount contributed to the program through this state income tax checkoff during the quarter as authorized by this section, and the Treasurer of State shall deduct from the Individual Income Tax Withholding Fund the amount so certified.

(c)(1) There is hereby created on the books of the Treasurer of State, the Auditor of State, and the Chief Fiscal Officer of the State a United States Olympic Committee Program Trust Fund. The Treasurer of State shall credit to the fund the amount certified each quarter in accordance with subsection (b) of this section.

(2) The moneys credited to this fund shall be held as trust funds in interest-bearing accounts only. All interest earned shall be credited to the program fund and shall be used only for the purposes of that fund. At the end of each fiscal year, the Treasurer of State shall transfer all designated moneys in the fund to the United States Olympic Committee.

(3) All funds deposited into the fund and all interest earned on deposits and fund balances in the fund may be disbursed as appropriated in each fiscal year of the biennium for the program created by this section.

(d)(1) The director is authorized to accept any gifts, grants, bequests, devises, and donations made to the State of Arkansas for the purpose of funding the United States Olympic Committee Program.

(2) The director shall deposit any of these gifts, grants, bequests, devises, and donations so received into the United States Olympic



Committee Program Trust Fund. These gifts, grants, bequests, devises, and donations shall be used together with any other funds appropriated for funding the program provided for in this section.

(3) All gifts, grants, bequests, devises, and donations shall be deposited, disbursed, budgeted, and regulated under the procedures prescribed by the Chief Fiscal Officer of the State under § 19-4-806.

(4)(A) The provisions of this section allowing the director to accept gifts, grants, bequests, devises, and donations shall be effective on August 13, 1993.

(B) The director is authorized to promulgate rules and regulations to carry out those provisions of this section.

(e) The division shall be authorized to establish any regulation to effectively carry out the revenue-producing provisions of this section.

**History.** Acts 1993, No. 471, §§ 1-4.

Tax Withholding Fund, § 19-5-904.

**Publisher's Notes.** This section was formerly codified as § 26-51-441.

United States Olympic Committee Program Trust Fund, § 19-5-915.

**Cross References.** Individual Income

## **26-51-2502. Disaster Relief Income Tax Check-Off Program.**

(a)(1) There is created the Arkansas Disaster Relief Program.

(2) The Revenue Division of the Department of Finance and Administration shall include on the Arkansas individual income tax forms, including those forms on which a husband and wife file separately on the same form and on all corporate income tax forms, a designation as follows:

(A) If you are entitled to a refund, check if you wish to designate [ ☐ \$1, ☐ \$5, ☐ \$10, ☐ \$20, ☐ \$\_\_\_\_\_ (write in amount), or ☐ all refund due, of your tax refund for the Arkansas Disaster Relief Program. Your refund will be reduced by this amount.

(B) If you owe an additional amount, check if you wish to contribute an additional ☐ \$1, ☐ \$5, ☐ \$10, ☐ \$20, ☐ \$\_\_\_\_\_ (write in amount) for the Arkansas Disaster Relief Program. If you wish to make a contribution to the program you must enclose a separate check for the amount of your contribution, payable to the Arkansas Disaster Relief Program.

(b) The Department of Finance and Administration shall quarterly certify to the Treasurer of State the amount contributed to the program through this state income tax check-off during the quarter as authorized by this section, and the Treasurer of State shall deduct from the Individual Income Tax Withholding Fund the amount so certified.

(c) The Director of the Department of Finance and Administration shall have the authority to promulgate all rules and regulations and all income tax forms, returns, and schedules necessary to carry out this program.

(d) The Director of the Department of Finance and Administration is authorized to accept any gifts, grants, bequests, devises, and donations made to the State of Arkansas for the purposes of funding the Arkansas Disaster Relief Program. The director shall deposit any of these gifts,

grants, bequests, devises, and donations so received into the Arkansas Disaster Relief Program Trust Fund. These gifts, grants, bequests, devises, and donations shall be used together with any other funds appropriated for funding the program provided for in this section. All gifts, grants, bequests, devises, and donations shall be deposited, disbursed, budgeted, and regulated under the procedures prescribed by the Chief Fiscal Officer of the State under § 19-4-807 [repealed].

(e)(1)(A) There is created on the books of the Treasurer of State, the Auditor of State, and the Chief Fiscal Officer of the State an Arkansas Disaster Relief Program Trust Fund to be used by the Arkansas Department of Emergency Management for disaster relief.

(B) The Treasurer of State shall credit to the fund the amount certified each quarter in accordance with subsection (b) of this section.

(2)(A) The moneys credited to this fund shall be held as trust funds in interest-bearing accounts only.

(B) All interest earned shall be credited to the fund and shall be used only for the purposes of that fund.

(3) All funds deposited into the fund and all interest earned on deposits and the fund balance in the fund may be disbursed as appropriated in each fiscal year of the biennium for the program created by this subchapter.

(f)(1) The Revenue Division of the Department of Finance and Administration may establish any rule to effectively carry out the revenue producing provisions of this section.

(2) The Director of the Department of Finance and Administration may promulgate rules to carry out the provisions of this section that allow the director to accept gifts, grants, bequests, devises, and donations.

**History.** Acts 1997, No. 1181, §§ 1-4; 1999, No. 646, § 66; 2007, No. 827, §§ 205, 206.

**A.C.R.C. Notes.** Section 19-4-807 referred to in subsection (d) of this section was repealed by Acts 2001, No. 1453, § 19. For present law, see § 19-4-802.

**Publisher's Notes.** This section was formerly codified as §§ 26-35-1101 — 26-35-1104.

**Cross References.** Arkansas Disaster Relief Program Trust Fund, § 19-5-1104. Individual Income Tax Withholding Fund, § 19-5-904.

## **26-51-2503. Contribution to the Arkansas School for the Blind and the Arkansas School for the Deaf.**

(a)(1) The Revenue Division of the Department of Finance and Administration shall include on the Arkansas individual income tax forms, including those forms on which a husband and wife file separately on the same form, and on all corporate income tax forms, a designation as follows:

“(A) If you are entitled to a refund, check if you wish to designate [    ] \$1, [    ] \$5, [    ] \$10, [    ] \_\_\_\_\_ (write in amount) or [    ] all refund due of your tax refund for the Arkansas School for the Blind

and the Arkansas School for the Deaf. Your refund will be reduced by this amount.

(B) If you owe an additional amount, check if you wish to contribute an additional ☐ \$1, ☐ \$5, ☐ \$10, ☐ \_\_\_\_\_ (write in amount) for the Arkansas School for the Blind and the Arkansas School for the Deaf. If you wish to make a contribution to the schools, you must enclose a separate check for the amount of your contribution payable to the Department of Finance and Administration.”

(2) The Arkansas School for the Blind and the Arkansas School for the Deaf check-off program on state income tax returns shall be effective beginning with the returns for the 2001 income year and each income year thereafter.

(3) The Director of the Department of Finance and Administration may promulgate all rules and regulations and all income tax forms, returns, and schedules necessary to implement this section.

(b) The Department of Finance and Administration shall quarterly certify to the Treasurer of State the amount contributed to the Arkansas School for the Blind and the Arkansas School for the Deaf through this state income tax check-off during the quarter, and the Treasurer of State shall deduct from the Individual Income Tax Withholding Fund the amount so certified.

(c) The Treasurer of State shall credit fifty percent (50%) of the amount certified each quarter to the School for the Blind Fund Account and fifty percent (50%) to the School for the Deaf Fund Account.

**History.** Acts 2001, No. 1556, § 1.

**Publisher's Notes.** This section was formerly codified as § 26-51-449.

**Cross References.** Individual Income Tax Withholding Fund, § 19-5-904.

School for the Blind Fund Account, § 19-5-304.

School for the Deaf Fund Account, § 19-5-304.

## 26-51-2504. Baby Sharon Act.

(a) This section shall be known and may be cited as the “Baby Sharon Act”.

(b) There is created the Baby Sharon's Children's Catastrophic Illness Grant Program.

(c) The Revenue Division of the Department of Finance and Administration shall include on the Arkansas individual income tax forms, including those forms on which a husband and wife file separately on the same form, and on all corporate income tax forms, a designation as follows:

(1) If you are entitled to a refund, check if you wish to designate ☐ \$1, ☐ \$5, ☐ \$10, ☐ \$20, ☐ \$\_\_\_\_\_ (write in amount), or ☐ all refund due, of your tax refund for the Baby Sharon's Children's Catastrophic Illness Grant Program Trust Fund. Your refund will be reduced by this amount.

(2) If you owe an additional amount, check if you wish to contribute an additional ☐ \$1, ☐ \$5, ☐ \$10, ☐ \$20, ☐ \$\_\_\_\_\_ (write in amount) for the Baby Sharon's Children's Catastrophic Illness Grant Program



Trust Fund. If you wish to make a contribution to the fund, you must enclose a separate check for the amount of your contribution, payable to the "Baby Sharon's Children's Catastrophic Illness Grant Program Trust Fund."

(d) The Director of the Department of Finance and Administration may:

(1) Accept any gifts, grants, bequests, devises, and donations made to the State of Arkansas for the purpose of funding the Baby Sharon's Children's Catastrophic Illness Grant Program Trust Fund; and

(2) Deposit any gifts, grants, bequests, devises, and donations so received into the Baby Sharon's Children's Catastrophic Illness Grant Program Trust Fund.

(e) The Department of Finance and Administration shall quarterly certify to the Treasurer of State the amount contributed to the Baby Sharon's Children's Catastrophic Illness Grant Program Trust Fund through this state income tax check-off during the quarter as authorized by this section, and the Treasurer of State shall deduct from the Individual Income Tax Withholding Fund the amount so certified.

(f) The director shall promulgate all rules and regulations and all income tax forms, returns, and schedules necessary to carry out the revenue-producing provisions of this section.

(g) The gifts, grants, bequests, devises, and donations made under this section shall be used together with any other funds appropriated for funding the Baby Sharon's Children's Catastrophic Illness Grant Program Trust Fund.

(h)(1) The Baby Sharon's Children's Catastrophic Illness Grant Program Committee shall be responsible for designating recipients of all funds established by the Baby Sharon's Catastrophic Illness Grant Program and the Department of Finance and Administration shall disburse the funds to the recipients.

(2) The committee shall annually provide to the Chief Fiscal Officer of the State documentation evidencing that funds have been used in accordance with the purposes of this section.

(i)(1) There is established an advisory committee to be known as the "Baby Sharon's Children's Catastrophic Illness Grant Program Committee".

(2) The committee shall consist of five (5) members as follows:

(A) One (1) person appointed by the Speaker of the House of Representatives;

(B) One (1) person appointed by the President Pro Tempore of the Senate; and

(C) Three (3) persons appointed by the Governor.

(3) The committee members shall be:

(A) Individuals who have knowledge of children with catastrophic illnesses or injuries; and

(B) Residents of the State of Arkansas at the time of appointment and throughout their terms.

(4)(A) Except for initial appointments, the appointments to the committee shall be for a term of four (4) years.

(B) For initial appointments, the members shall draw lots to determine the length of their terms as follows:

- (i) Two (2) members shall have terms of two (2) years;
- (ii) Two (2) members shall have terms of three (3) years; and
- (iii) One (1) member shall have a term of four (4) years.

(5) If a vacancy occurs during a term, the Governor shall appoint a replacement for the unexpired term.

(6) The Governor shall designate the chair.

(7)(A) The committee shall meet at times and places as the chair deems necessary, but no meetings shall be held outside the State of Arkansas.

(B) A majority of the members of the committee shall constitute a quorum for the purpose of transacting business.

(C) All action of the committee shall be by a majority vote of the full membership of the committee.

(8) The committee shall consult with the Arkansas Children's Hospital concerning grant applications related to the Baby Sharon's Children's Catastrophic Illness Grant Program.

(9)(A) Members of the committee shall serve without pay.

(B) Members of the committee shall not receive expense reimbursement under § 25-16-902.

**History.** Acts 2003, No. 279, § 1; 2005, No. 415, §§ 1-3; 2007, No. 827, § 207.

**Publisher's Notes.** This section was formerly codified as §§ 26-35-1201 — 26-35-1205.

**Cross References.** Baby Sharon's Children's Catastrophic Illness Grant Program Trust Fund, § 19-5-1123.

Individual Income Tax Withholding Fund, § 19-5-904.

## **26-51-2505. Voluntary contributions to Organ Donor Awareness Education Trust Fund.**

(a) The Revenue Division of the Department of Finance and Administration shall include on the Arkansas individual income tax forms, including those forms on which a husband and wife file separately on the same form and on all corporate income tax forms, the opportunity to allow taxpayers to voluntarily apply any amount of their tax refund for organ donor awareness education.

(b) Funds collected pursuant to this section shall be credited to the Organ Donor Awareness Education Trust Fund.

(c) The Director of the Department of Finance and Administration shall promulgate all rules and regulations and all income tax forms, returns, schedules, or other materials necessary to carry out the provisions of this section.

**History.** Acts 2003, No. 1362, § 3[6].

**A.C.R.C. Notes.** Acts 2003, No. 1362 contained two sections designated as Section 2, Section 3, and Section 4 each.

**Publisher's Notes.** This section was

formerly codified as §§ 26-51-451 and 26-51-452.

**Cross References.** Organ Donor Awareness Education Trust Fund, § 19-5-1129.

**26-51-2506. Military Family Relief Check-off Program.**

(a) This section shall be known and may be cited as the "Military Family Relief Check-off Program".

(b) There is created the Military Family Relief Check-off Program.

(c) The Revenue Division of the Department of Finance and Administration shall include on the Arkansas individual income tax forms, including those forms on which a husband and wife file separately on the same form, and on all corporate income tax forms, a designation as follows:

(1) If you are entitled to a refund, check if you wish to designate ☐ \$1, ☐ \$5, ☐ \$10, ☐ \$20, ☐ \$\_\_\_\_\_ (write in amount), or ☐ all refund due, of your tax refund for the Military Family Relief Check-off Program. Your refund will be reduced by this amount.

(2) If you owe an additional amount, check if you wish to contribute an additional ☐ \$1, ☐ \$5, ☐ \$10, ☐ \$20, ☐ \$\_\_\_\_\_ (write in amount) for the Military Family Relief Check-off Program. If you wish to make a contribution to the program, you must enclose a separate check for the amount of your contribution, payable to the "Military Family Relief Check-off Program."

(d) The Director of the Department of Finance and Administration may:

(1) Accept any gifts, grants, bequests, devises, and donations made to the State of Arkansas for the purpose of funding the Military Family Relief Check-off Program; and

(2) Deposit any gifts, grants, bequests, devises, and donations received under this section into the Military Family Relief Trust Fund.

(e) The Department of Finance and Administration shall quarterly certify to the Treasurer of State the amount contributed to the Military Family Relief Trust Fund through the state income tax check-off created under this subchapter, and the Treasurer of State shall deduct from the Individual Income Tax Withholding Fund the amount certified.

(f) The director shall promulgate rules and all income tax forms, returns, and schedules necessary to carry out the revenue-producing provisions of this section.

(g) The gifts, grants, bequests, devises, and donations made under this section shall be used together with any other funds appropriated for the Military Family Relief Trust Fund.

(h) The Adjutant General shall promulgate all rules necessary for implementing the grant program created under this section for the Military Family Relief Trust Fund.

(i)(1) The Adjutant General or his or her designee shall use funds from the Military Family Relief Trust Fund to establish a grant program to assist the families of members of the National Guard and the reserve components of the armed forces.

(2)(A) The grant program created under this section shall assist the families of members of the National Guard and the reserve compo-



nents of the armed forces who serve on active duty for a minimum of thirty (30) days as a result of September 11, 2001.

(B) The eligibility criteria for receiving grants under the grant program shall include, but not be limited to, the following:

- (i) The need of the family;
- (ii) The pay grade of the member of the National Guard and reserve components of the armed forces;
- (iii) The difference between the member's military salary and civilian salary; or
- (iv) Any other factors that establish the family's financial hardship.

(j)(1) The check-off for the Military Family Relief Check-off Program on state income tax returns shall be effective for tax years beginning on or after January 1, 2005.

(2) The provisions of this section allowing the Director of the Department of Finance and Administration to accept gifts, grants, bequests, devises, and donations shall be effective on August 1, 2005.

**History.** Acts 2005, No. 1028, § 1; 2007, No. 827, §§ 209, 210.

**Cross References.** Individual Income Tax Withholding Fund, § 19-5-904.

**Publisher's Notes.** This section was formerly codified as §§ 26-35-1301 — 26-35-1305.

Military Family Relief Trust Fund, § 19-5-1127.

## **26-51-2507. Contribution to Arkansas Area Agencies on Aging.**

(a)(1) The Revenue Division of the Department of Finance and Administration shall include on the Arkansas individual income tax forms, including those forms on which a husband and wife file separately on the same form, and on all corporate income tax forms, a designation as follows:

"If you are entitled to a refund, check if you wish to designate ☐ \$1, ☐ \$5, ☐ \$10, ☐ \_\_\_\_\_ (write in amount) or ☐ all refund due of your tax refund for the Arkansas Area Agencies on Aging to fund programs and activities for senior citizens. Your refund will be reduced by this amount.

If you owe an additional amount, check if you wish to contribute an additional ☐ \$1, ☐ \$5, ☐ \$10, ☐ \_\_\_\_\_ (write in amount) for the Arkansas Area Agencies on Aging to fund programs and activities for senior citizens. If you wish to make a contribution to the Arkansas Area Agencies on Aging, you must enclose a separate check for the amount of your contribution payable to the Department of Finance and Administration."

(2) The Arkansas Area Agencies on Aging check-off program on state income tax returns shall be effective beginning with the returns for the 2005 tax year and each subsequent tax year.

(3) The Director of the Department of Finance and Administration may promulgate rules and develop all income tax forms, returns, and schedules necessary to implement this section.

(b) The department shall quarterly certify to the Treasurer of State the amount contributed to the Arkansas Area Agencies on Aging through this state income tax check-off during the quarter, and the Treasurer of State shall deduct from the Individual Income Tax Withholding Fund the amount certified.

(c) The Treasurer of State shall credit the amount certified each quarter to the Area Agencies on Aging Fund.

**History.** Acts 2005, No. 1821, § 1.

Aging Fund, § 19-5-1228.

**Publisher's Notes.** This section was formerly codified as § 26-51-454.

Individual Income Tax Withholding Fund, § 19-5-904.

**Cross References.** Area Agencies on

### **26-51-2508. Income tax check-off program for contributions to the Newborn Umbilical Cord Blood Initiative.**

(a)(1) It is the purpose of this section to provide a means by which an individual taxpayer may designate a portion or all of his or her income tax refund to be withheld and contributed for the purposes set forth in this section.

(2) It is the intent of the General Assembly that the income tax check-off program established in this section is supplemental to any funding and in no way is intended to take the place of funding that would otherwise be appropriated for this purpose.

(b) The Revenue Division of the Department of Finance and Administration shall include on the Arkansas individual income tax forms, including those forms on which a husband and wife file separately on the same form and on all corporate income tax forms, a designation as follows:

“(1) If you are entitled to a refund, check if you wish to designate [ ] \$1, [ ] \$5, [ ] \$10, [ ] \$20, [ ] \$\_\_\_\_\_ (write in amount), or [ ] all refund due of your tax refund for the Newborn Umbilical Cord Blood Initiative. Your refund will be reduced by this amount.

(2) If you owe an additional amount, check if you wish to contribute an additional [ ] \$1, [ ] \$5, [ ] \$10, [ ] \$20, [ ] \$\_\_\_\_\_ (write in amount) for the Newborn Umbilical Cord Blood Initiative. If you wish to make a contribution to the program, you must enclose a separate check for the amount of your contribution, payable to the Newborn Umbilical Cord Blood Initiative.”

(c) The Department of Finance and Administration shall certify quarterly to the Treasurer of State the amount contributed to the program through this state income tax check-off during the quarter as authorized by this section, and the Treasurer of State shall deduct from the:

(1) Individual Income Tax Withholding Fund the amount certified by the department as contributed to the program on individual income tax forms; and

(2) Corporate Income Tax Withholding Fund the amount certified by the department as contributed to the program on corporate income tax forms.

(d) The Director of the Department of Finance and Administration shall promulgate all rules and all income tax forms, returns, and schedules necessary to carry out the program.

**History.** Acts 2007, No. 695, § 1; 2009, No. 655, § 7.

**Publisher's Notes.** This section was formerly codified as § 26-51-455.

**Amendments.** The 2009 amendment rewrote (c), which read: "The Department of Finance and Administration shall certify quarterly to the Treasurer of State the amount contributed to the program through this state income tax checkoff

during the quarter as authorized by this section, and the Treasurer of State shall deduct from the Income Tax Withholding Fund the amount so certified."

**Cross References.** Corporate Income Tax Withholding Fund, § 19-5-903.

Individual Income Tax Withholding Fund, § 19-5-904.

Newborn Umbilical Cord Blood Initiative Act, § 20-8-501 et seq.

### RESEARCH REFERENCES

**Ark. L. Rev. Comment,** Tiny Wonders, the Stem Cell Phenomenon, 61 Ark. L. Rev. 673.

### 26-51-2509. Contribution to Arkansas Tax-Deferred Tuition Savings Program account.

(a)(1) The Revenue Division of the Department of Finance and Administration shall include on the Arkansas individual income tax forms, including those forms on which a husband and wife file separately on the same form, a designation as follows:

"If you are entitled to a refund, check if you wish to designate [ ] \$25, [ ] \$50, [ ] \$100, [ ] \_\_\_\_\_ (write in amount) or [ ] all of your tax refund to an Arkansas Tax-Deferred Tuition Savings Program account. Your refund will be reduced by this amount."

(2) The Arkansas Tax-Deferred Tuition Savings Program account must already be in existence at the time the election in subdivision (a)(1) of this section is made, and the pertinent information regarding the Arkansas Tax-Deferred Tuition Savings Program account must be provided to the Department of Finance and Administration so that the deposit can be correctly made.

(b) The Arkansas Tax-Deferred Tuition Savings Program check-off program on state income tax returns shall be effective beginning with the returns for the 2009 tax year and each subsequent tax year.

(c) The Director of the Department of Finance and Administration shall promulgate rules and develop all income tax forms, returns, and schedules necessary to implement this section.

**History.** Acts 2009, No. 211, § 1.

**Publisher's Notes.** This section was formerly codified as § 26-51-456.

**Cross References.** Tax-Deferred Tu-

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